

# **ATTACHMENT 48**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS :  
ANTITRUST LITIGATION :  
-----: MDL No. 2002  
THIS DOCUMENT APPLIES TO: : 08-MD-02002  
ALL ACTIONS :

-- HIGHLY CONFIDENTIAL --

Tuesday, May 21, 2013

Videotaped deposition of AL POPE,  
taken at the offices of Pepper Hamilton LLP,  
3000 Two Logan Square, 18th & Arch Street,  
Philadelphia, Pennsylvania 19103, beginning  
at 9:12 a.m., before LINDA ROSSI RIOS, RPR,  
CCR and Notary Public.

<p style="text-align: right;"><b>2</b></p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 QUINN EMANUEL URQUHART &amp; SULLIVAN</p> <p>4 BY: STEIG D. OLSON, ESQUIRE</p> <p>5 and</p> <p>6 LEE TURNER-DODGE, ESQUIRE</p> <p>7 51 Madison Avenue, 22nd Floor</p> <p>8 New York, New York 10010</p> <p>9 212-849-7152</p> <p>10 212-849-7000</p> <p>11 steigolson@quinnemanuel.com</p> <p>12 leeturnerdodge@quinnemanuel.com</p> <p>13 On behalf of the Direct Purchaser</p> <p>14 Plaintiffs</p> <p>15</p> <p>16 MILBERG LLP</p> <p>17 BY: CHARLES SLIDDERS, ESQUIRE</p> <p>18 One Pennsylvania Plaza</p> <p>19 New York, New York 10119</p> <p>20 646-733-5727</p> <p>21 cslidders@milberg.com</p> <p>22 On behalf of the Indirect Purchaser</p> <p>23 Plaintiffs</p> <p>24</p> <p>25 JENNER &amp; BLOCK, LLP</p> <p>BY: RICHARD P. CAMPBELL, ESQUIRE</p> <p>353 North Clark Street</p> <p>Chicago, Illinois 60654</p> <p>312.923.2818</p> <p>rcampbell@jenner.com</p> <p>On behalf of Kraft Foods Global, Inc.</p> <p>FAEGRE BAKER DANIELS</p> <p>BY: RYAN M. HURLEY, ESQUIRE</p> <p>300 North Meridian Street, Suite 2700</p> <p>Indianapolis, Indiana 46204-1750</p> <p>317.237.1144</p> <p>ryan.hurley@faegrebd.com</p> <p>On behalf of Midwest Poultry Services</p>	<p style="text-align: right;"><b>4</b></p> <p>1 PEPPER HAMILTON, LLP</p> <p>2 BY: JAN P. LEVINE, ESQUIRE</p> <p>3 ROBIN SUMNER, ESQUIRE</p> <p>4 and</p> <p>5 EVAN W. DAVIS, ESQUIRE</p> <p>6 3000 Two Logan Square</p> <p>7 18th &amp; Arch Street</p> <p>8 Philadelphia, Pennsylvania 19103</p> <p>9 215-981-4714</p> <p>10 215-981-4652</p> <p>11 215-981-4245</p> <p>12 levinej@pepperlaw.com</p> <p>13 sumnerr@pepperlaw.com</p> <p>14 davisew@pepperlaw.com</p> <p>15 On Behalf of United Egg Producers and the</p> <p>16 United States Egg Marketers</p> <p>17</p> <p>18 TELEPHONIC APPEARANCES:</p> <p>19</p> <p>20 MARCUS &amp; SHAPIRA LLP</p> <p>21 BY: MOIRA E. CAIN-MANNIX, ESQUIRE</p> <p>22 One Oxford Center</p> <p>23 35th Floor</p> <p>24 Pittsburgh, Pennsylvania 15219</p> <p>25 412-338-3344</p> <p>cain-mannix@macus-shapira.com</p> <p>On behalf of Giant Eagle, Inc.</p> <p>YODER KEATING MUETHING &amp; KLEKAMPS</p> <p>BY: JOSEPH M. CALLOW, JR., ESQUIRE</p> <p>One East Fourth Street</p> <p>Cincinnati, Ohio 45202</p> <p>513-579-6419</p> <p>jcallow@kmlaw.com</p> <p>On behalf of Ohio Fresh</p>
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2 (Pages 2 to 5)

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<p style="text-align: right;">14</p> <p>1 2 3       VIDEOGRAPHER: We are now on the 4 record. Please note that microphones 5 are sensitive and will pick up 6 whispering and private conversations. 7 Please turn off all cell phones or 8 place them away from the microphones 9 as they can interfere with the 10 deposition audio. Recording will 11 continue until all parties agree to go 12 off the record. 13       My name is Robert Mirabella, 14 representing Veritext New York. 15       The date today is May 21, 2013, 16 and the time is approximately 17 9:12 a.m. 18       This deposition is being held at 19 Pepper Hamilton located at Two Logan 20 Square, Philadelphia, Pennsylvania. 21 The caption of this case is In Re: 22 Processed Egg Products Antitrust 23 Litigation. This case is filed in the 24 United States District Court Eastern 25 District of Pennsylvania, Case Number</p>	<p style="text-align: right;">16</p> <p>1 2       MR. DAVIS: Evan Davis, Pepper 3 Hamilton. 4       MS. ANDERSON: Carrie Anderson 5 with Weil Gotshal on behalf of Michael 6 Foods. 7       MR. HURLEY: Ryan Hurley with 8 Faegre Baker Daniels for Midwest 9 Poultry Services. 10       MR. HUTCHINSON: Troy 11 Hutchinson, Briggs and Morgan on 12 behalf of Sparboe Farms. 13       MR. ARAGONA: Arin Aragona from 14 Eimer Stahl on behalf of Moark LLC and 15 Norco Ranch, Inc. 16       MS. LEVIN: Christine Levin of 17 Dechert on behalf of RW Sauder, Inc. 18       MS. CAIN-MANNIX: Moira 19 Cain-Mannix. I represent Giant Eagle, 20 Inc. 21       MS. LEVINE: Anybody else on the 22 phone? 23       MR. OLSON: Is there anyone on 24 the phone who hasn't introduced 25 themselves yet?</p>
<p style="text-align: right;">15</p> <p>1 2       08-MD-02002, MDL Number 2002. The 3 name of the witness is Al Pope. 4       At this time the attorneys 5 present in the room and attending 6 remotely will, please, identify 7 themselves for the record and the 8 parties they represent. 9       MR. OLSON: This is Steig Olson 10 from Quinn Emanuel Urquhart &amp; Sullivan 11 for the Direct Purchaser Plaintiffs. 12 And I have with me Lee Turner-Dodge. 13       MR. CAMPBELL: Richard Campbell, 14 Jenner &amp; Block, Chicago for the Kraft 15 plaintiffs. 16       MR. SLIDDERS: Charles Slidders, 17 Milberg LLP, New York for the Indirect 18 Purchaser Plaintiffs. 19       MS. LEVINE: Jan Levine for 20 United Egg Producers and United States 21 Egg Marketers, Pepper Hamilton. 22       MS. SUMNER: Robin Sumner, 23 Pepper Hamilton for United Egg 24 Producers and United States Egg 25 Marketers.</p>	<p style="text-align: right;">17</p> <p>1 2       MR. ZIEMIANEK: Margaret -- go 3 ahead. 4       MR. CALLOW: This is Joe Callow 5 for Ohio Fresh Eggs. 6       MR. ZIEMIANEK: And also 7 Margaret Ziemianek on behalf of Nu-Cal 8 Foods. 9       MS. LEVINE: Anyone else? 10       VIDEOGRAPHER: Our reporter 11 Linda Rossi representing Veritext 12 will, please, swear in the witness and 13 we can proceed. 14       - - - 15       AL POPE, after having been first 16 duly sworn, was examined and testified 17 as follows: 18       - - - 19       MS. LEVINE: Before we begin 20 today, counsel have agreed on certain 21 stipulations. All objections other 22 than to form will be held for trial. 23 And one objection is for all objectors 24 so that we don't have numerous people 25 objecting.</p>

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<p style="text-align: right;">18</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 EXAMINATION</p> <p>4 - - -</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Good morning, Mr. Pope.</p> <p>7 A. Good morning.</p> <p>8 Q. You can put the document down</p> <p>9 for a moment.</p> <p>10 A. Okay.</p> <p>11 Q. And I will get back to that</p> <p>12 document later.</p> <p>13 Could you, please, begin just</p> <p>14 by stating your full name for the record?</p> <p>15 A. My name is Albert E. Pope, past</p> <p>16 president of United Egg Producers.</p> <p>17 Q. Thank you, sir. Are you</p> <p>18 currently employed today?</p> <p>19 A. No.</p> <p>20 Q. When was the last time you were</p> <p>21 employed?</p> <p>22 A. The end of the year '06.</p> <p>23 Retired January 1, '07.</p> <p>24 Q. So is it fair to say that since</p> <p>25 retiring as president of United Egg</p>	<p style="text-align: right;">20</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was -- it was '79 maybe, '80.</p> <p>3 Q. And you haven't been deposed</p> <p>4 other than the two times relating to that</p> <p>5 lawsuit?</p> <p>6 A. Right. Right.</p> <p>7 Q. Well, I'll mention just a</p> <p>8 couple sort of ground rules then.</p> <p>9 A. Okay.</p> <p>10 Q. First is because Linda is here</p> <p>11 to take down our testimony, we should both do</p> <p>12 our best not to speak over each other. And</p> <p>13 I'll do my best to wait for your answer</p> <p>14 before I move on to the next question.</p> <p>15 A. Okay.</p> <p>16 Q. And, please, do the same.</p> <p>17 Another rule is, at any time today if you</p> <p>18 want to take a break, just let me know, that</p> <p>19 will be no problem. The only time we don't</p> <p>20 do that is usually during a pending question,</p> <p>21 but at any other time you're welcome to take</p> <p>22 a break if you need one.</p> <p>23 Is there anything that will</p> <p>24 prevent you from -- well, strike that. Let</p> <p>25 me mention one other ground rule, which is,</p>
<p style="text-align: right;">19</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Producers, you have not held any other job?</p> <p>3 A. No.</p> <p>4 Q. And where do you currently</p> <p>5 live?</p> <p>6 A. I live just north of Atlanta,</p> <p>7 and the address is 8245 Sagewood Drive, one</p> <p>8 word, Gainesville, Georgia 30506.</p> <p>9 Q. Do you have any current plans</p> <p>10 to move from where you live now?</p> <p>11 A. No.</p> <p>12 Q. Have you been deposed before?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. I believe it's just been twice,</p> <p>16 if I remember right.</p> <p>17 Q. And can you tell us just</p> <p>18 briefly what those two depositions were about</p> <p>19 and when they occurred?</p> <p>20 A. Yeah, they were both regarding</p> <p>21 a suit that UEP filed against Standard</p> <p>22 Brands. And it was a long time ago.</p> <p>23 Q. Do you know approximately when</p> <p>24 that suit was?</p> <p>25 A. Yeah, I'm going to say it</p>	<p style="text-align: right;">21</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 I'll do my best today to ask clear questions</p> <p>3 that are understandable. And if at any time</p> <p>4 I ask a question that's unclear, I just ask</p> <p>5 that you stop me and ask for clarification.</p> <p>6 Is that fair?</p> <p>7 A. That's fine.</p> <p>8 Q. And then if you answer a</p> <p>9 question, I'll assume you understood it. Is</p> <p>10 that fair?</p> <p>11 A. Yeah.</p> <p>12 Q. Another rule is, we need to</p> <p>13 answer questions verbally.</p> <p>14 A. Don't nod, huh?</p> <p>15 Q. Correct.</p> <p>16 A. Unless I'm sleepy here.</p> <p>17 Q. Right. So if you answer a</p> <p>18 question --</p> <p>19 A. Yeah.</p> <p>20 Q. -- I'll assume you understood</p> <p>21 it.</p> <p>22 A. I'll say yes or no. Right.</p> <p>23 Don't know.</p> <p>24 Q. You understood -- you</p> <p>25 understand you're under oath today?</p>

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<p style="text-align: right;">22</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. You've sworn an oath to tell --</p> <p>4 A. Yes.</p> <p>5 Q. -- the complete truth?</p> <p>6 A. Yes.</p> <p>7 Q. And just, again, if you could</p> <p>8 try to wait for my question to finish before</p> <p>9 you give an answer. Linda would appreciate</p> <p>10 it.</p> <p>11 A. Okay.</p> <p>12 Q. On the point of clarity, we're</p> <p>13 going to be talking today about a UEP program</p> <p>14 that was at one time called the animal care</p> <p>15 program and later called the UEP certified</p> <p>16 program, and I -- I'll probably just refer to</p> <p>17 it as the program because it had those two</p> <p>18 different names. Is that going to work for</p> <p>19 you?</p> <p>20 A. Yes.</p> <p>21 Q. And if at any time, like I</p> <p>22 said, you're confused --</p> <p>23 A. Yes.</p> <p>24 Q. -- about what I'm referring to,</p> <p>25 just let me know.</p>	<p style="text-align: right;">24</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was, you know, 200 maybe. That's where we</p> <p>3 kind of ended up. And the change at that</p> <p>4 time was that prior to that time, we depended</p> <p>5 on the regionals as they were Capper-Volstead</p> <p>6 cooperatives, to certify their members or</p> <p>7 whatever you want to call it. They did the</p> <p>8 screening, I guess I'd put it that way.</p> <p>9 Then in '99 or so when we --</p> <p>10 the regionals didn't go all at once. They</p> <p>11 went different times out. As they did, at</p> <p>12 UEP we would pick up some of the functions</p> <p>13 that regional would lose by closing down. At</p> <p>14 that time, we amended our bylaws to</p> <p>15 accommodate individual membership from an</p> <p>16 individual producer which was really a</p> <p>17 milestone in the whole communications</p> <p>18 dealing. So that was a significant change.</p> <p>19 Q. Okay. Great. That's helpful.</p> <p>20 Whose interest does UEP represent?</p> <p>21 A. Egg farmers.</p> <p>22 Q. What is an egg farmer?</p> <p>23 A. Egg farmer that owns</p> <p>24 facilities, owns the birds, most of the time</p> <p>25 they do their own marketing different, unlike</p>
<p style="text-align: right;">23</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Now, United Egg Producers are</p> <p>3 also referred to as UEP. Is that understood?</p> <p>4 A. Yes.</p> <p>5 Q. So you were the president of</p> <p>6 UEP for over 30 years. Is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And can you tell us what UEP</p> <p>9 is?</p> <p>10 A. Well, UEP is a farmer</p> <p>11 cooperative made up originally of five</p> <p>12 members. We had five regions, each region</p> <p>13 being a cooperative, and then they got</p> <p>14 together as the market changed over the</p> <p>15 years, and they felt that they needed to</p> <p>16 coordinate all their efforts, so they started</p> <p>17 UEP. And then we had five original members</p> <p>18 then and I'm going to say '99, I don't</p> <p>19 exactly remember the exact year, but the</p> <p>20 regionals went through quite a transition</p> <p>21 because the producer numbers were</p> <p>22 dramatically changing from 8 and 900. I see</p> <p>23 it says 8,000 in this, but it wasn't really</p> <p>24 8,000. 8 or 900 producers nationwide. And</p> <p>25 it ended up after a lot of the consolidation</p>	<p style="text-align: right;">25</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the broilers. That's it.</p> <p>3 Q. What do you mean "they do their</p> <p>4 own marketing"?</p> <p>5 A. They go and have specific</p> <p>6 customers that they call on and there's -- of</p> <p>7 course, there's a variety of ways that they</p> <p>8 do it. There are some that are representing</p> <p>9 three or four producers or something like</p> <p>10 that, but the -- basically the industry</p> <p>11 really changed and the individual producer or</p> <p>12 company, producing company began marketing</p> <p>13 directly to customers their eggs.</p> <p>14 Q. And approximately what time did</p> <p>15 that happen?</p> <p>16 A. Oh, golly. It was a long</p> <p>17 transition period. I'm going to say, you</p> <p>18 know, it started in the mid-'80s and</p> <p>19 continued to consolidate and shift the</p> <p>20 production from different parts of the</p> <p>21 country.</p> <p>22 Q. Now, most of the time today</p> <p>23 we'll be talking about events that happened</p> <p>24 in the 2000s. So approximately 2000 to 2007.</p> <p>25 Would it be fair to say that during that</p>

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<p style="text-align: right;">26</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 period, UEP members did their own marketing?</p> <p>3 A. The majority of them did, yes.</p> <p>4 Q. Were there ones that did not?</p> <p>5 A. Pardon?</p> <p>6 Q. You said "the majority." Were</p> <p>7 there UEP members that did not do their own</p> <p>8 marketing?</p> <p>9 A. Yes.</p> <p>10 Q. What members do you have in</p> <p>11 mind?</p> <p>12 A. I wouldn't know who they are.</p> <p>13 I don't know, I'm not on the ground not</p> <p>14 knowing who they market to there.</p> <p>15 Q. Fair enough. For those members</p> <p>16 of UEP during that period that did not do</p> <p>17 their own marketing, did UEP do the marketing</p> <p>18 for those members or did some other --</p> <p>19 A. No, some other organization did</p> <p>20 that. It was, you know, a broker or some</p> <p>21 kind of a broker that may have production.</p> <p>22 And -- may have their own production. And</p> <p>23 what a contract producer would sell to that</p> <p>24 producer maybe, you know, small percentage of</p> <p>25 their eggs.</p>	<p style="text-align: right;">28</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that governed how decisions were made.</p> <p>3 Correct?</p> <p>4 A. No.</p> <p>5 Q. They did not?</p> <p>6 A. Excuse me. We did not, yes.</p> <p>7 Q. Does UEP solely represent the</p> <p>8 interest of egg producers or does it also</p> <p>9 represent other interests in the egg</p> <p>10 industry?</p> <p>11 A. UEP only represents egg</p> <p>12 producers.</p> <p>13 Q. What does UEP do to represent</p> <p>14 the interest of egg producers?</p> <p>15 A. Well, there are just a number</p> <p>16 of functions. We're always looking for</p> <p>17 issues that affect the egg industry, that we</p> <p>18 can do better as a consolidated group than we</p> <p>19 could do individually. Unlike the broiler</p> <p>20 industry, our production is really scattered</p> <p>21 amongst a lot of producers compared to</p> <p>22 broilers. And so they were a pretty weak</p> <p>23 voice, had it not been for UEP, especially in</p> <p>24 Washington, we had -- it was a primary</p> <p>25 activity of ours in Washington. And</p>
<p style="text-align: right;">27</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Great. Just another point to</p> <p>3 try to make sure we're on the same page.</p> <p>4 Like I said, generally when I'm asking</p> <p>5 questions, it will be about the 2000 time</p> <p>6 period, 2000 approximately through 2007. So</p> <p>7 if I don't specify another time period,</p> <p>8 generally that's what I'll be asking about.</p> <p>9 A. Yes. Okay.</p> <p>10 Q. But if you're ever unclear what</p> <p>11 time period I'm asking about, let me know.</p> <p>12 A. Okay.</p> <p>13 Q. So during that general time</p> <p>14 period, was UEP a standards development</p> <p>15 organization?</p> <p>16 A. Was a what?</p> <p>17 Q. A standards development</p> <p>18 organization.</p> <p>19 A. I don't know what that is.</p> <p>20 Q. Did UEP have formal procedures</p> <p>21 that governed how decisions were made at UEP?</p> <p>22 In other words, procedures written down?</p> <p>23 A. No.</p> <p>24 Q. Just so the record is clear,</p> <p>25 UEP did not have formal written procedures</p>	<p style="text-align: right;">29</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 obviously the producers felt that it was a</p> <p>3 long way away from them and they didn't know</p> <p>4 anybody there and could have little or no</p> <p>5 effect without working as a group.</p> <p>6 Q. So one thing UEP did for egg</p> <p>7 producers was give them a voice in</p> <p>8 Washington --</p> <p>9 A. Yes.</p> <p>10 Q. -- and other places. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And in that sense UEP was a</p> <p>13 trade association. Correct?</p> <p>14 A. Well, we were never a trade</p> <p>15 association. The cooperative -- all the</p> <p>16 cooperatives that I've ever know of do trade</p> <p>17 association type functions.</p> <p>18 Q. And that would be one of them?</p> <p>19 A. And that would be one of them,</p> <p>20 yeah.</p> <p>21 Q. Now, what did UEP do with</p> <p>22 respect to supply management?</p> <p>23 A. The -- I would say that the</p> <p>24 most that we did was we really tried to</p> <p>25 educate producers. Educate producers as we</p>

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<p style="text-align: right;">30</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 were looking at different economic factors in</p> <p>3 the industry. Most of those were produced by</p> <p>4 USDA statistics, things like that. We would</p> <p>5 try to interpret them and then we would try</p> <p>6 to give our members information that we felt</p> <p>7 that when they sat down with their marketing</p> <p>8 team, that they would -- that they would have</p> <p>9 a -- that they would have more information to</p> <p>10 make their flock decision and so on and so</p> <p>11 forth.</p> <p>12 Q. Did UEP work to facilitate</p> <p>13 supply adjustment programs?</p> <p>14 A. Yeah. Of course you have to</p> <p>15 understand that all the programs were</p> <p>16 voluntary so we never knew really whether</p> <p>17 they did them or not.</p> <p>18 Q. Understood. And we'll get back</p> <p>19 to that. What did UEP do to facilitate</p> <p>20 supply adjustment programs?</p> <p>21 A. Well, as part of the</p> <p>22 statistical analysis, we would say, for</p> <p>23 example, we -- our flock is X amount of birds</p> <p>24 more than a year ago. Whatever changes</p> <p>25 during the year that would change the</p>	<p style="text-align: right;">32</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: It's a -- the --</p> <p>5 we didn't have -- you know, you keep</p> <p>6 referring to it as supply management.</p> <p>7 And you can do that, but I'm always</p> <p>8 going to answer the same. Because</p> <p>9 when have you a voluntary program, you</p> <p>10 can say that here's a recommendation,</p> <p>11 you know, you might want to consider</p> <p>12 this as part of your marketing</p> <p>13 program. You might want to consider</p> <p>14 since we have an over supply of doing</p> <p>15 a number of things, and then we would</p> <p>16 suggest maybe you should, you know,</p> <p>17 ratchet down the amount of bullets that</p> <p>18 you're buying, maybe you should --</p> <p>19 maybe we should try to put together an</p> <p>20 export order. That was always one</p> <p>21 option that we had and used from</p> <p>22 various times. And then, of course,</p> <p>23 we looked at that as a seasonal thing.</p> <p>24 That's what producers wanted.</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">31</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 economics of the industry, we really tried to</p> <p>3 advise everyone and educate them so that they</p> <p>4 could make better decisions. And, of course,</p> <p>5 as they got larger through consolidation or</p> <p>6 whatever, it became more and more critical</p> <p>7 all the time. And so -- but, you know, we</p> <p>8 didn't take title to the product. We didn't</p> <p>9 market to a retailer or anything like that.</p> <p>10 So we didn't do that kind of a function. So</p> <p>11 about the most that we could do to help would</p> <p>12 be to suggest what they can do to make the</p> <p>13 market better.</p> <p>14 Q. In your last answer you</p> <p>15 referred to something becoming more and more</p> <p>16 critical all the time. What were you</p> <p>17 referring to?</p> <p>18 A. I was referring to the fact</p> <p>19 that the larger they were, the more exposure</p> <p>20 they had, the more meaningful the decisions</p> <p>21 that they made were on their own company.</p> <p>22 Q. So the point you were making is</p> <p>23 as consolidation occurs, egg producers became</p> <p>24 larger and more critical to consider supply</p> <p>25 adjustment factors?</p>	<p style="text-align: right;">33</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Understood. So let's talk</p> <p>3 about this point you made about it being</p> <p>4 voluntary. What does that mean to you, that</p> <p>5 these programs were voluntary?</p> <p>6 A. It means they don't have to do</p> <p>7 anything that we suggest to them.</p> <p>8 Q. So in other words, it means</p> <p>9 that UEP members weren't forced to be in the</p> <p>10 program. Is that right?</p> <p>11 A. Any program we had, none of</p> <p>12 them were forced in. And I would say that in</p> <p>13 every one of our programs, there were members</p> <p>14 that were not included. They didn't want to</p> <p>15 be.</p> <p>16 Q. Besides it meaning that no one</p> <p>17 was forced to be part of the program, does</p> <p>18 voluntary mean anything else to you?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question.</p> <p>21 THE WITNESS: Well, as I</p> <p>22 understand it or as I would interpret</p> <p>23 it, while UEP might represent or I</p> <p>24 mean suggest things to do that would</p> <p>25 be beneficial to them, there was no --</p>

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<p style="text-align: right;">34</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 there was no way that we had of</p> <p>3 determining whether anybody did or</p> <p>4 not. And we would never know. We</p> <p>5 don't know. And so it's voluntary</p> <p>6 because they don't want to do it, they</p> <p>7 don't have to do it.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Okay. So let's talk about</p> <p>10 these programs a little bit more. Can we</p> <p>11 call them supply adjustment programs?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question.</p> <p>14 THE WITNESS: No. They just --</p> <p>15 none of the programs that we did</p> <p>16 adjusted to supply.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. So what would you call the</p> <p>19 supply related programs that UEP was involved</p> <p>20 with?</p> <p>21 A. They're just economic</p> <p>22 recommendations that they can take or not</p> <p>23 take.</p> <p>24 Q. These programs might involve</p> <p>25 recommendations about reducing flock size.</p>	<p style="text-align: right;">36</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. So just to be clear, one of the</p> <p>4 things that might be suggested as part of</p> <p>5 this economic program would be a flock</p> <p>6 reduction, correct, from time to time?</p> <p>7 A. Yes, from time to time you</p> <p>8 have -- okay.</p> <p>9 Q. Let's try to go through a few</p> <p>10 more so we know we're on the same page.</p> <p>11 A. Okay.</p> <p>12 Q. Another thing might be</p> <p>13 suggested by UEP would be a hatch reduction.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Early molt was another thing</p> <p>17 that was suggested?</p> <p>18 A. Yes.</p> <p>19 Q. Disposing of flocks early was</p> <p>20 another thing that was suggested. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. Now, as I understand it, these</p> <p>23 programs would be adopted by the UEP board.</p> <p>24 Correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">35</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Correct?</p> <p>3 A. Yeah.</p> <p>4 Q. And they might involve</p> <p>5 recommendations about reducing hatch?</p> <p>6 A. You know, yeah, all of the</p> <p>7 recommendations we made were well known to</p> <p>8 everybody. And -- but when you do it and</p> <p>9 you're getting out to all of your members,</p> <p>10 you're trying to educate them on periods</p> <p>11 coming up because the majority of our</p> <p>12 producers are on the farm going through a</p> <p>13 chicken house, going through maybe a</p> <p>14 packaging attachment that they have to the</p> <p>15 chicken house and they don't think about</p> <p>16 those things. So we tried to -- on a regular</p> <p>17 basis our responsibility was to give them the</p> <p>18 best statistical information that we could so</p> <p>19 they could make a decision.</p> <p>20 Q. Understood. If you could go a</p> <p>21 little slower with me over the program</p> <p>22 because not all of us --</p> <p>23 A. Okay.</p> <p>24 Q. -- know quite as much as you</p> <p>25 do.</p>	<p style="text-align: right;">37</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And then UEP --</p> <p>3 A. Well, you know, let me take</p> <p>4 that back a minute.</p> <p>5 The board, of course, had final</p> <p>6 oversight on what we did. Now, I think there</p> <p>7 was a -- the board didn't meet every month.</p> <p>8 We did meet occasionally at conference calls</p> <p>9 and things, but I think it was pretty much</p> <p>10 taken for granted that throughout the year as</p> <p>11 we saw the statistics change either favorable</p> <p>12 or unfavorable, we advised producers so that</p> <p>13 they could make a decision.</p> <p>14 Q. Okay. So your point is that</p> <p>15 usually the programs would be adopted by the</p> <p>16 board, but not always?</p> <p>17 MS. LEVINE: Object to the form</p> <p>18 of the question.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Is that your point?</p> <p>21 MS. LEVINE: Mischaracterizes</p> <p>22 the witness' testimony.</p> <p>23 THE WITNESS: Give me the</p> <p>24 question again. Sorry.</p> <p>25 BY MR. OLSON:</p>

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<p style="text-align: right;">38</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is the point you're making that</p> <p>3 usually the UEP board would adopt these</p> <p>4 programs, but not always?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. My question was, these programs</p> <p>9 we've been talking about that might involve</p> <p>10 flock reduction or hatch reduction, these</p> <p>11 types of things, my question is, the UEP</p> <p>12 board would adopt those programs. Correct?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question. Asked and answered.</p> <p>15 Mischaracterizing the witness'</p> <p>16 testimony.</p> <p>17 THE WITNESS: Okay.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. I'm just wanting to go through</p> <p>20 the procedure of how it happened.</p> <p>21 A. Well, it happened different</p> <p>22 ways. I'm not going to be able to tell you.</p> <p>23 I can say, for example, we were always -- we</p> <p>24 were always on guard, so to speak. And we</p> <p>25 would get a telephone call from producers, it</p>	<p style="text-align: right;">40</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 basically -- he's in flock management and he</p> <p>3 has heavy statistical leaning on everything</p> <p>4 that he does. So we contracted from Don time</p> <p>5 to time when we needed a special survey or</p> <p>6 something like that. And then Don would</p> <p>7 occasionally be invited to our board to give</p> <p>8 maybe what he thought his outlook was for the</p> <p>9 next year, something like that. So I think</p> <p>10 the industry enjoyed a long-term relationship</p> <p>11 with Don Bell.</p> <p>12 Q. And approximately how far back</p> <p>13 does that relationship between Don Bell and</p> <p>14 UEP go?</p> <p>15 MS. ANDERSON: Objection.</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question. Mischaracterizing</p> <p>18 the form of the question.</p> <p>19 THE WITNESS: All the time that</p> <p>20 I've worked at UEP, Don Bell has been</p> <p>21 available to the industry.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. So back at least to the 1970s.</p> <p>24 Correct?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">39</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 wouldn't be at a board meeting, and they</p> <p>3 would say, hey, have you guys thought of</p> <p>4 that, did you see this, did you see what</p> <p>5 happened over here. And that might initiate</p> <p>6 an evaluation by our staff to say, you know,</p> <p>7 we should be advising people of what's going</p> <p>8 on here, and then we do it. So sometimes we</p> <p>9 did it, but it was an expected thing from us</p> <p>10 periodically when there was something that</p> <p>11 was notable in the industry going on.</p> <p>12 Q. What was expected of UEP?</p> <p>13 A. To make recommendations like</p> <p>14 this.</p> <p>15 Q. We'll go through more specific</p> <p>16 examples. You mentioned a statistical</p> <p>17 analysis being done. Who is Don Bell?</p> <p>18 A. Don Bell has been -- he</p> <p>19 actually was a -- he was affiliated with UC</p> <p>20 Davis campus. UC Davis campus is very</p> <p>21 agriculture oriented. Don over the years has</p> <p>22 earned the reputation of being one of the</p> <p>23 most effective, written the book on egg</p> <p>24 production. He's written several of them.</p> <p>25 But the bible that the industry used is</p>	<p style="text-align: right;">41</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. You mentioned that from time to</p> <p>3 time UEP would contract with Don Bell. Does</p> <p>4 that mean Mr. Bell would be compensated for</p> <p>5 his time and effort?</p> <p>6 A. Sometimes and sometimes not.</p> <p>7 If we had a project that we wanted to have</p> <p>8 done, we would contract with Don to do that.</p> <p>9 Q. So from time to time Mr. Bell</p> <p>10 would be hired by UEP and paid money for his</p> <p>11 time and efforts?</p> <p>12 A. Occasionally, but even in all</p> <p>13 the time that I was there, it was not much.</p> <p>14 I mean, I would venture to say -- I don't</p> <p>15 know that we ever -- the total amount would</p> <p>16 ever been over \$10,000. I mean, it just</p> <p>17 wasn't that much.</p> <p>18 Q. Now, Mr. Bell from time to time</p> <p>19 would prepare economic studies and forecasts</p> <p>20 for UEP. Is that right?</p> <p>21 A. He did it for the industry</p> <p>22 because the industry publications would pick</p> <p>23 it up, and so would we. We might have used</p> <p>24 it more than someone reading the</p> <p>25 publications, but he did both. All his stuff</p>

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<p style="text-align: right;">42</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was public information.</p> <p>3 Q. And you referred to Mr. Bell</p> <p>4 publishing a bible on flock management. Is</p> <p>5 that a specific book you have in mind?</p> <p>6 A. Yes.</p> <p>7 Q. What book is that?</p> <p>8 A. I don't know the correct title</p> <p>9 of it. It is if anybody -- if anybody is</p> <p>10 thinking about egg production or broiler</p> <p>11 production, there is a book that Don Bell and</p> <p>12 someone else, I don't remember his name, I'm</p> <p>13 sorry, but he was the broiler specialist, Don</p> <p>14 was the egg specialist. So he would</p> <p>15 basically explain all the intricacies of</p> <p>16 producing eggs.</p> <p>17 Q. Would it be fair to say that</p> <p>18 Mr. Bell believed that supply management was</p> <p>19 important to the profitability of the</p> <p>20 industry?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question. Lack of foundation.</p> <p>23 Let me finish.</p> <p>24 THE WITNESS: Okay. Well, it</p> <p>25 wasn't supply management because we</p>	<p style="text-align: right;">44</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 about it, but never went past the</p> <p>3 talking stage. Let me put it that</p> <p>4 way.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. But it's something Mr. Bell</p> <p>7 talked about, supply management. Correct?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question. Mischaracterizes the</p> <p>10 witness' testimony. Lack of</p> <p>11 foundation. Calls for a speculative</p> <p>12 answer.</p> <p>13 THE WITNESS: Okay. The answer</p> <p>14 is the same as the last one I gave</p> <p>15 you. It isn't supply management. He</p> <p>16 had zero the ability to change</p> <p>17 anything. If he changed anything, it</p> <p>18 was just a recommendation that</p> <p>19 somebody would follow.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. I'm just wanting to -- us to be</p> <p>22 clear and I don't want specific terms to get</p> <p>23 in the way about this issue that you're</p> <p>24 saying the industry talked about. I'm not</p> <p>25 discussing whether anybody agreed to do</p>
<p style="text-align: right;">43</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 didn't have that. We --</p> <p>3 recommendations did he give us, yes,</p> <p>4 he gave recommendations and we put</p> <p>5 them out. We'd put them out in our</p> <p>6 newsletter from him, we'd identify it</p> <p>7 came from him or whatever. But that's</p> <p>8 as far as it ever went.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. But Mr. Bell, it would be fair</p> <p>11 to say, was a long-time advocate for supply</p> <p>12 management by egg producers. Correct?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question. Lacks foundation.</p> <p>15 Speculative.</p> <p>16 THE WITNESS: Okay. I'll say</p> <p>17 here that now you've said it four or</p> <p>18 five times, the supply management, we</p> <p>19 don't have supply management, we've</p> <p>20 never had it. Our board would not</p> <p>21 tolerate supply management because an</p> <p>22 issue like supply management has come</p> <p>23 up because our Canadian friends up</p> <p>24 north have a true supply management</p> <p>25 program. And our industry talked</p>	<p style="text-align: right;">45</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 anything or whether programs were effective.</p> <p>3 But when you referred to something the</p> <p>4 industry talked about --</p> <p>5 A. Yes.</p> <p>6 Q. -- what were you referring to?</p> <p>7 A. Well, this goes back a lot of</p> <p>8 years. It goes back maybe 15 to 20 years</p> <p>9 ago. Whenever we go through, whenever the</p> <p>10 industry goes through a disastrous period,</p> <p>11 you will always find some producers talking</p> <p>12 about how great supply management would be.</p> <p>13 And from my standpoint, if we had a supply</p> <p>14 management program, it would be like</p> <p>15 Valhalla, you know what I mean. And we</p> <p>16 would -- I'm saying like from a staff</p> <p>17 standpoint, it would really be effective, but</p> <p>18 we have -- the only supply management</p> <p>19 programs that exist in the United States are</p> <p>20 done by the government and the milk producers</p> <p>21 as they control their prices and control</p> <p>22 their distribution. So they have a supply</p> <p>23 management program. We didn't have anything</p> <p>24 that resembled that, but producers would say,</p> <p>25 hey, don't you think it would be a great</p>

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<p style="text-align: right;">46</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 idea. And they'd look up to our northern</p> <p>3 borders here, and we worked very closely with</p> <p>4 the guys from Canada, they're friends of</p> <p>5 ours. We served together on the</p> <p>6 International Egg Commission. And then they</p> <p>7 hear things like this, Ontario, the</p> <p>8 providence of Ontario is the largest egg</p> <p>9 producing providence in Canada. The quotas,</p> <p>10 no, this is the quotas, not the actual bird,</p> <p>11 it's not the physical entity, the ownership</p> <p>12 of the quota is \$200 a bird. So now I'm</p> <p>13 sitting with 5 million birds, boy, that</p> <p>14 really looks good.</p> <p>15 Q. So would it be fair to say that</p> <p>16 Mr. Bell -- strike that.</p> <p>17 Would it be fair to say that</p> <p>18 UEP from time to time would caution the</p> <p>19 industry against over production?</p> <p>20 A. Yes.</p> <p>21 Q. Would it be fair to say that</p> <p>22 UEP from time to time would propose the</p> <p>23 efforts by which the industry could cooperate</p> <p>24 to address the problem of over production?</p> <p>25 MS. LEVINE: Object to the form</p>	<p style="text-align: right;">48</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 eggs. We would say here's four ways</p> <p>3 that, you know, if one of them fits</p> <p>4 in, maybe you want to do it. But as</p> <p>5 soon as the times got better, then</p> <p>6 everybody built a new chicken house.</p> <p>7 Typical farmers.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. If UEP recommended that its</p> <p>10 members reduce their flock by 5 percent, how</p> <p>11 is that not related to egg production?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question. States a fact not in</p> <p>14 evidence.</p> <p>15 THE WITNESS: Well, whether it</p> <p>16 was 5 percent or 20 percent or</p> <p>17 whatever it was, it was just a figure</p> <p>18 to try to balance the -- to suggest</p> <p>19 balancing the supply with the demand.</p> <p>20 And that didn't work. On many fronts</p> <p>21 it became less workable as the chain</p> <p>22 stores consolidated and got bigger</p> <p>23 because they understood that their</p> <p>24 customers did not like wild</p> <p>25 fluctuations in the product. So to</p>
<p style="text-align: right;">47</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of the question. Lack of foundation.</p> <p>3 Mischaracterizes the witness'</p> <p>4 testimony.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Do you want me to restate the</p> <p>7 question?</p> <p>8 A. Yes.</p> <p>9 Q. Would it be fair to say UEP</p> <p>10 from time to time would propose ways the</p> <p>11 industry would cooperate to address the</p> <p>12 problem of over production?</p> <p>13 A. Well --</p> <p>14 MS. LEVINE: Same objection.</p> <p>15 MS. ANDERSON: Same objection.</p> <p>16 THE WITNESS: The</p> <p>17 recommendations that we made were -- I</p> <p>18 don't think we ever -- I don't think</p> <p>19 it was ever intended or ever thought</p> <p>20 to be controlling the production. UEP</p> <p>21 never did that. We gave them the</p> <p>22 information, and if we recommended it,</p> <p>23 they look at a U.S. population, you</p> <p>24 look at the demand for eggs per capita</p> <p>25 and you tell them there's too many</p>	<p style="text-align: right;">49</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the extent possible, they left their</p> <p>3 prices the same. So when we dropped</p> <p>4 down, when our wholesale price dropped</p> <p>5 down, and it's not reflected in the</p> <p>6 marketplace, then we're left with a</p> <p>7 lot of eggs.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. As president of UEP, did you</p> <p>10 generally find Mr. Bell's work to be</p> <p>11 reliable?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question. Speculation.</p> <p>14 THE WITNESS: You know, I didn't</p> <p>15 make any decisions on what I was going</p> <p>16 to do with anybody's production. So</p> <p>17 I -- you know, it's not fair for me to</p> <p>18 say how effective it was because that</p> <p>19 would be a producer out there looking</p> <p>20 at the information, was it helpful to</p> <p>21 him? I assume that it was help to</p> <p>22 them because, you know, they wanted</p> <p>23 that. And we shared or distributed</p> <p>24 that information to our members.</p> <p>25 BY MR. OLSON:</p>

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<p style="text-align: right;">50</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And focusing on Mr. Bell's</p> <p>3 statistical analyses, for example, were they</p> <p>4 generally reliable?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. Hypothetical. Calls</p> <p>7 for speculation.</p> <p>8 THE WITNESS: I really don't</p> <p>9 know. I -- you know, I think that,</p> <p>10 again, he earned the reputation that</p> <p>11 people looked at and considered, I</p> <p>12 think they looked at Don as a very</p> <p>13 credible man. So from that</p> <p>14 standpoint, I would say that the</p> <p>15 individual producers listen to Don</p> <p>16 Bell.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Did you have a different view</p> <p>19 about Mr. Bell's credibility or did you also</p> <p>20 find him credible?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 THE WITNESS: Well, we thought</p> <p>24 he was credible.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">52</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of UEP members?</p> <p>3 A. Anybody that buys eggs.</p> <p>4 Q. So shell egg producers sell</p> <p>5 their eggs to different types of customers.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 Q. For example, they sell eggs to</p> <p>9 retailers. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. They sell to grocery store</p> <p>12 chains, as you mentioned. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. They sell, for example, to big</p> <p>15 companies like Kroger and Walmart. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. They sell to food service</p> <p>18 companies?</p> <p>19 A. Yes.</p> <p>20 Q. What's a food service company?</p> <p>21 A. There are a number of big food</p> <p>22 service companies across the U.S. that supply</p> <p>23 restaurants, and that's the way we would look</p> <p>24 at it. We would just --</p> <p>25 Q. The company that supplies the</p>
<p style="text-align: right;">51</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. When you say "we," you mean</p> <p>3 UEP. Correct?</p> <p>4 A. UEP, yeah.</p> <p>5 Q. Let's talk just briefly about</p> <p>6 UEP members. You describe them -- how would</p> <p>7 you describe them just very generally?</p> <p>8 A. They're farmers.</p> <p>9 Q. Now, I take it that there are</p> <p>10 different types of farmers, there are</p> <p>11 different types of UEP members. Correct?</p> <p>12 A. No.</p> <p>13 Q. Well, for example, some are</p> <p>14 shell egg producers and some are on the</p> <p>15 process side. Is that fair to say?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question.</p> <p>18 THE WITNESS: They wouldn't be a</p> <p>19 member as a processor. There are egg</p> <p>20 producers that now process their own</p> <p>21 eggs. They could be a member. But as</p> <p>22 far as that segment is concerned, they</p> <p>23 couldn't be a member of UEP.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Who are generally the customers</p>	<p style="text-align: right;">53</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 restaurant?</p> <p>3 A. Yeah, the company that supplies</p> <p>4 the restaurant. Right.</p> <p>5 Q. And some shell egg producers</p> <p>6 sell to companies that break the eggs and</p> <p>7 turn them into egg products. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And some companies sell both</p> <p>10 shell eggs and egg products. Correct?</p> <p>11 A. Very few, but there are some,</p> <p>12 yes.</p> <p>13 Q. And any --</p> <p>14 A. We kind of treated that all</p> <p>15 separately. I mean, basically we represented</p> <p>16 egg producers.</p> <p>17 Q. Well, just stick with me.</p> <p>18 A. Yeah, okay.</p> <p>19 Q. So would it be fair to say that</p> <p>20 any given egg producer could have multiple</p> <p>21 customers and different types of customers?</p> <p>22 A. Yes.</p> <p>23 Q. And those customers might have</p> <p>24 different demand for eggs. Is that fair?</p> <p>25 A. I just don't follow it. Of</p>

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<p style="text-align: right;">54</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 course they would have a different demand</p> <p>3 than a chain store.</p> <p>4 Q. Well, for example, an egg</p> <p>5 producer might have some customers that are</p> <p>6 extremely concerned with the care given to</p> <p>7 the hens that hatch eggs, for example.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And an egg producer might have</p> <p>11 some customers that are less concerned with</p> <p>12 that. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. And an egg producer might have</p> <p>15 some customers that were willing to pay a</p> <p>16 premium for eggs produced in a certain way?</p> <p>17 MS. LEVINE: Object to the form</p> <p>18 of the question. Calls for a</p> <p>19 hypothetical.</p> <p>20 THE WITNESS: Yeah. We would</p> <p>21 think that it would -- we would think</p> <p>22 that would be great, but it didn't</p> <p>23 work that way. It only -- what</p> <p>24 happens is, you know, you got to</p> <p>25 remember the competitor. The</p>	<p style="text-align: right;">56</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 questions. You have your time for an</p> <p>3 expert.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. And an egg producer, a member</p> <p>6 of UEP could have customers like that and</p> <p>7 they could at the same time have customers</p> <p>8 that just want the cheapest shell eggs they</p> <p>9 can buy. Right?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. Once again, calls</p> <p>12 for a hypothetical. This is a fact</p> <p>13 witness. You have your time for an</p> <p>14 expert. Mr. Pope, you can answer --</p> <p>15 MR. OLSON: We don't need any</p> <p>16 more speaking objections. I'd ask you</p> <p>17 to keep them very short.</p> <p>18 MS. LEVINE: You can't ask a</p> <p>19 fact question -- a fact witness</p> <p>20 hypotheticals.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Do you need me to ask it again?</p> <p>23 A. I don't remember what you said.</p> <p>24 Sorry.</p> <p>25 Q. I'll try it again.</p>
<p style="text-align: right;">55</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 competitor levels all that out. I</p> <p>3 mean, you'd like to think you can</p> <p>4 recover your costs. And obviously</p> <p>5 anybody that's in the production</p> <p>6 business, you know, they want to be</p> <p>7 able to cover their costs and make</p> <p>8 some money. That's what producers</p> <p>9 would like to do, so...</p> <p>10 BY MR. OLSON:</p> <p>11 Q. A producer wants to maximize</p> <p>12 profit. Correct?</p> <p>13 A. Sure.</p> <p>14 Q. So a producer might have</p> <p>15 customers, for example, that want organic</p> <p>16 cage free enriched eggs and be willing to pay</p> <p>17 a little bit more for them. Correct?</p> <p>18 A. Yes.</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. Mr. Pope, wait until</p> <p>21 the question is finished and I can get</p> <p>22 an objection.</p> <p>23 Object to all your</p> <p>24 hypotheticals. This is a fact</p> <p>25 witness, he can answer to fact</p>	<p style="text-align: right;">57</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: And your objection</p> <p>3 is noted.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. So we're talking about an egg</p> <p>6 producer, they might have some customers that</p> <p>7 want the organic enriched cage free eggs that</p> <p>8 they're willing pay a little bit more for.</p> <p>9 And they might also have other customers that</p> <p>10 just want the cheapest eggs they can buy.</p> <p>11 Correct?</p> <p>12 MS. LEVINE: Same objection.</p> <p>13 THE WITNESS: Yeah.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. And that egg producer to</p> <p>16 maximize profit would want to sell to both</p> <p>17 customers. Correct?</p> <p>18 A. Yes.</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. This is not an egg</p> <p>21 producer.</p> <p>22 - - -</p> <p>23 (Exhibit Pope-1, Feedstuffs</p> <p>24 article "Pope: UEP has done</p> <p>25 'remarkable things', was marked for</p>

15 (Pages 54 to 57)



<p style="text-align: right;">58</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 identification.)</p> <p>3 - - -</p> <p>4 BY MR. OLSON:</p> <p>5 Q. So I've handed you what we've</p> <p>6 marked as Pope Exhibit 1.</p> <p>7 For everybody on the phone,</p> <p>8 this is an article published in Feedstuffs on</p> <p>9 March 12, 2007, titled, "Pope: UEP has done</p> <p>10 'remarkable things.'"</p> <p>11 Now, Mr. Pope, I know you had a</p> <p>12 chance to begin looking at this. Have you</p> <p>13 had a chance to just briefly review the whole</p> <p>14 document?</p> <p>15 A. No.</p> <p>16 Q. If you'd like, your counsel</p> <p>17 suggested this, we can take just a -- we can</p> <p>18 go off the record and let you finish</p> <p>19 reviewing, so why don't we do that.</p> <p>20 VIDEOGRAPHER: The time is</p> <p>21 approximately 9:52 a.m. We are off</p> <p>22 the record.</p> <p>23 - - -</p> <p>24 (A discussion off the record</p> <p>25 occurred.)</p>	<p style="text-align: right;">60</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 just stay on the record.</p> <p>3 MS. LEVINE: For all future</p> <p>4 times if you hand a witness a</p> <p>5 document, they need time to read it,</p> <p>6 that counts as deposition time.</p> <p>7 MR. OLSON: Going forward we can</p> <p>8 do that. I had understood that you</p> <p>9 were saying something different.</p> <p>10 Do you want to go back on the</p> <p>11 record now?</p> <p>12 MS. LEVINE: Yeah, why don't we</p> <p>13 go back on the record and Mr. Pope can</p> <p>14 tell us when he has completed reading</p> <p>15 the document.</p> <p>16 - - -</p> <p>17 VIDEOGRAPHER: Stand by, please.</p> <p>18 The time is approximately 9:54 a.m.</p> <p>19 We're back on the record.</p> <p>20 THE WITNESS: Okay. This is the</p> <p>21 first time I've seen it.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. I understand. I'll just make a</p> <p>24 general point about documents. Most of them</p> <p>25 won't be even that long, but in general, when</p>
<p style="text-align: right;">59</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (The following discussion was</p> <p>4 held off the video record.)</p> <p>5 - - -</p> <p>6 MS. LEVINE: Just make a note,</p> <p>7 we are on the record for purposes of</p> <p>8 time, if he's looking at a document,</p> <p>9 for the purpose time, nobody can talk</p> <p>10 to a witness, we're not off the</p> <p>11 record.</p> <p>12 MR. OLSON: We just did go off</p> <p>13 the record.</p> <p>14 MS. LEVINE: We just wanted to</p> <p>15 count the time. We're not going to</p> <p>16 have long breaks.</p> <p>17 MR. OLSON: Okay. But I -- when</p> <p>18 you had said we should go off the</p> <p>19 record, I understood that we were</p> <p>20 going off the record and it wouldn't</p> <p>21 be on time. If you're going to --</p> <p>22 MS. LEVINE: The witness.</p> <p>23 MR. OLSON: If you're going to</p> <p>24 say that we're counting all the time,</p> <p>25 we'll do that going forward and we'll</p>	<p style="text-align: right;">61</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you get a document, sometimes I'll ask you</p> <p>3 just to look over the whole thing, sometimes</p> <p>4 just to look at portions. But at any time if</p> <p>5 I ask a question and you want to go back and</p> <p>6 look at things --</p> <p>7 A. I can.</p> <p>8 Q. -- you're always welcome to do</p> <p>9 that. Fair enough?</p> <p>10 A. Uh-huh.</p> <p>11 Q. So you've had a general chance</p> <p>12 to look at the document?</p> <p>13 A. Yes.</p> <p>14 Q. So this document I thought</p> <p>15 would be helpful because it discusses two</p> <p>16 things, some you've already touched on, one</p> <p>17 is restructuring in the egg industry and one</p> <p>18 is restructuring of UEP.</p> <p>19 A. Yeah. Okay.</p> <p>20 MS. LEVINE: Mr. Pope, there's</p> <p>21 no question. Mr. Steig is asking his</p> <p>22 question which you should listen to.</p> <p>23 THE WITNESS: Which is what?</p> <p>24 MS. LEVINE: Which you should</p> <p>25 listen to.</p>

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<p style="text-align: right;">62</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. I'm not to the question yet.</p> <p>4 That was a lot of preface.</p> <p>5 A. Okay.</p> <p>6 Q. But generally I thought this</p> <p>7 would help us talk about restructuring that</p> <p>8 happened in the egg industry while you were</p> <p>9 president and also the restructuring by UEP.</p> <p>10 Let's start with the restructuring in the egg</p> <p>11 industry that you touched on. That's</p> <p>12 something you discussed in this article.</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 MS. LEVINE: Objection to form</p> <p>16 of the question. This witness did not</p> <p>17 write this article.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Do you recall --</p> <p>20 A. And actually, there are -- you</p> <p>21 know, there are things in here that I would</p> <p>22 maybe not even agree with. I think Rod Smith</p> <p>23 wrote the article or something, so -- and I</p> <p>24 didn't see it afterwards. So when he wrote</p> <p>25 an article, he did it because he got the</p>	<p style="text-align: right;">64</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the egg industry itself.</p> <p>3 A. Yes.</p> <p>4 Q. Not UEP.</p> <p>5 A. Oh.</p> <p>6 Q. To be specific, if you look at</p> <p>7 the bottom, the very bottom of the first</p> <p>8 page, it says, "Also in the '80s and '90s,</p> <p>9 the breaking and further-processing sector</p> <p>10 started to grow, with breakers buying eggs</p> <p>11 from commercial (or shell-egg) producers,</p> <p>12 taking eggs off their hands during periods of</p> <p>13 surplus supplies and weak prices."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is that generally consistent</p> <p>17 with your knowledge?</p> <p>18 A. Generally it is consistent.</p> <p>19 They are our best customer.</p> <p>20 Q. A couple paragraphs above that</p> <p>21 there's the point also about the '80s and</p> <p>22 '90s. It says, "In the '80s and '90s,</p> <p>23 producers started building environmentally</p> <p>24 controlled housing and huge, integrated</p> <p>25 complexes with housing that was 'in line' to</p>
<p style="text-align: right;">63</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 information partially from himself or a bio</p> <p>3 that I had or something.</p> <p>4 Q. I understand. As we go through</p> <p>5 it, if you see anything that you believe is</p> <p>6 inaccurate, let us know, but let me ask the</p> <p>7 questions.</p> <p>8 A. Okay. Okay.</p> <p>9 Q. But I take it you recall giving</p> <p>10 an interview --</p> <p>11 A. Yes.</p> <p>12 Q. -- to the person who wrote this</p> <p>13 article?</p> <p>14 A. Yes.</p> <p>15 Q. And one of the things that is</p> <p>16 discussed in the article and that you</p> <p>17 discussed in the interview was changes in the</p> <p>18 egg industry over time. Correct?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. The witness didn't</p> <p>21 say anything about what he said.</p> <p>22 THE WITNESS: I said we went</p> <p>23 from five members to 200.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Let's talk about the change in</p>	<p style="text-align: right;">65</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 plants..." and then it goes on.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is that generally consistent</p> <p>6 with your knowledge?</p> <p>7 A. Yes.</p> <p>8 Q. When it refers to "huge</p> <p>9 integrated complexes with housing that was</p> <p>10 'in line' to plants," what does that mean in</p> <p>11 plain language?</p> <p>12 A. Well, it meant that some</p> <p>13 producers, I mean the further egg processors</p> <p>14 have always been our best customers. I mean,</p> <p>15 you know, they buy 30 percent of the eggs</p> <p>16 that are produced. Okay. Over the time,</p> <p>17 some, I'm saying some, also owned production.</p> <p>18 So we -- they would be a member of UEP on the</p> <p>19 basis of their production. And so from that</p> <p>20 point, they would be a member.</p> <p>21 Q. And so integrated means what?</p> <p>22 A. Well, integrated is different</p> <p>23 for different people. You mentioned one</p> <p>24 which was the in-line breaking, that was</p> <p>25 really a new phenomenon, you know, ten years</p>

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<p style="text-align: right;">66</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 ago. The environmental house was really a</p> <p>3 phenomenon that was started by Rose Acres for</p> <p>4 the industry. And everybody went to that.</p> <p>5 But integrated could mean a couple of things.</p> <p>6 The majority of our producer members, it</p> <p>7 meant that they would take their eggs, pack</p> <p>8 the eggs to meet the consumer -- their</p> <p>9 customer's demand. And so that was the</p> <p>10 extent of it. They packed them in cartons,</p> <p>11 packed them on flats for wholesale. And that</p> <p>12 was it. There were two or three that did</p> <p>13 operate breaking operations. And in those</p> <p>14 cases, they would produce the eggs, process</p> <p>15 the eggs, break the eggs, make egg products</p> <p>16 from them.</p> <p>17 Q. And what's an example of a</p> <p>18 company that did that?</p> <p>19 A. I don't know. I mean, there's</p> <p>20 a couple of them. I mean there's maybe --</p> <p>21 Q. Does any come to mind?</p> <p>22 A. -- three or four. There's not</p> <p>23 a lot. I believe that Moark is a company</p> <p>24 that does that. That's the only one I can</p> <p>25 think of offhand. I know there's three or</p>	<p style="text-align: right;">68</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Sorry, Mr. Olson</p> <p>3 asks his question before you start</p> <p>4 answering.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. I'll try that one again.</p> <p>8 So we talked about there was</p> <p>9 some shell egg producers, then over time they</p> <p>10 integrated into the processing side.</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. But there were also some</p> <p>15 companies that started off as processors and</p> <p>16 over time they integrated back to the -- to</p> <p>17 owning some shell egg production facilities.</p> <p>18 Correct?</p> <p>19 A. They went both --</p> <p>20 MS. LEVINE: Object to form of</p> <p>21 the question. Mischaracterizes the</p> <p>22 witness' testimony.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. You were saying it went both</p> <p>25 ways?</p>
<p style="text-align: right;">67</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 four. Not too many. Not very many. It</p> <p>3 wasn't like all our producers did that.</p> <p>4 Q. Understood. Let me see if I</p> <p>5 have this right. You had some shell egg</p> <p>6 producers that around this time, the '80s and</p> <p>7 '90s, built out in-line plants and integrated</p> <p>8 into the processing side. Correct?</p> <p>9 MS. LEVINE: Object to the form</p> <p>10 of the question.</p> <p>11 THE WITNESS: Okay. Yes, as far</p> <p>12 as I know, that's right.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. And then there were also some</p> <p>15 companies that started off on the processing</p> <p>16 side, purchasing from --</p> <p>17 A. Yes.</p> <p>18 Q. -- the egg producers, and over</p> <p>19 time they integrated into egg production.</p> <p>20 Right?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question. Mischaracterizing</p> <p>23 the witness' testimony. Wait until</p> <p>24 Mr. Steig --</p> <p>25 MR. OLSON: Mr. Olson.</p>	<p style="text-align: right;">69</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. It went both ways.</p> <p>3 Q. And if you turn to page 2, I</p> <p>4 believe that's a point you're making at the</p> <p>5 top, where you say -- not where you say,</p> <p>6 sorry, where the article says, However,</p> <p>7 breakers -- I won't read it, makes a point</p> <p>8 about breakers and then the article says, "In</p> <p>9 response, breakers began putting in their own</p> <p>10 flocks and building their own in-line</p> <p>11 complexes, giving them control of their costs</p> <p>12 and prices, as well as quality."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. That's the point we were just</p> <p>16 discussing, that some companies start off as</p> <p>17 breakers, integrate it backwards into</p> <p>18 production. Correct?</p> <p>19 MS. LEVINE: Object form of the</p> <p>20 question. The document states what</p> <p>21 the document states.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. And this is not a memory test,</p> <p>25 sir, but do any examples of companies like</p>

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<p style="text-align: right;">70</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that come to mind?</p> <p>3 A. No.</p> <p>4 Q. Have you heard of a company</p> <p>5 called RW Sauder?</p> <p>6 A. Yes.</p> <p>7 Q. Was that -- was Sauder company</p> <p>8 an example of a company that integrated</p> <p>9 backward in that way, do you know?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of --</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Fair enough.</p> <p>15 A. But --</p> <p>16 Q. Now this article states then</p> <p>17 "This development continues to grow, Pope</p> <p>18 said."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And this is a document from</p> <p>22 2007. Was that development growing in 2007?</p> <p>23 MS. ANDERSON: Objection to</p> <p>24 form.</p> <p>25 MS. LEVINE: Objection to the</p>	<p style="text-align: right;">72</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 processed side and UEP in the middle,' Pope</p> <p>3 said. UEP needed to do something to unify</p> <p>4 the industry."</p> <p>5 Is that consistent with your</p> <p>6 recollection?</p> <p>7 A. You know, yes. I'm going to</p> <p>8 answer yes, but the interpretation of that</p> <p>9 could take several different ways, I think.</p> <p>10 Q. That's why we're here.</p> <p>11 A. Yeah.</p> <p>12 Q. What is the point that you are</p> <p>13 making about the shell side and the processed</p> <p>14 side and UEP in the middle?</p> <p>15 A. Well, okay. We understand, and</p> <p>16 I don't know the workings of all the</p> <p>17 processor side, the breaker side, but</p> <p>18 obviously they want to buy and can buy at --</p> <p>19 like after Easter periods, if they want to,</p> <p>20 because they can process the eggs and they</p> <p>21 can carry the storage in either dry form,</p> <p>22 liquid, frozen, whatever they want to do,</p> <p>23 which producers can't do. We got to sell our</p> <p>24 eggs. So it was always a ying/yang kind of</p> <p>25 relationship that you had with processors.</p>
<p style="text-align: right;">71</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 form of the question. He retired in</p> <p>3 2007.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Or was it growing --</p> <p>6 A. I don't know what's happened</p> <p>7 since then, but it had pretty much settled</p> <p>8 down. It was no new breakers coming on or</p> <p>9 anything like that. I mean, it was</p> <p>10 basically --</p> <p>11 Q. But this development of</p> <p>12 breakers integrating backwards --</p> <p>13 A. It was pretty much done by '07</p> <p>14 I think.</p> <p>15 MS. LEVINE: Mr. Pope, you</p> <p>16 really have to wait for the question,</p> <p>17 because the court -- the poor court</p> <p>18 reporter cannot type over you.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. Then there's a quote attributed</p> <p>22 to you, it says, it was a painful situation</p> <p>23 for UEP to, he said, and that's not in</p> <p>24 quotes, but then there's a quote that says,</p> <p>25 "There we were with the shell side and the</p>	<p style="text-align: right;">73</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Processors always wanted to buy at the bottom</p> <p>3 of the market and producers always wanted to</p> <p>4 sell at the top of the market and, therefore,</p> <p>5 you have -- you know, you go back and forth.</p> <p>6 Q. So it says, "...UEP needed to</p> <p>7 do something to unify the industry." What</p> <p>8 did UEP do to unify the industry?</p> <p>9 MS. LEVINE: Object to the form.</p> <p>10 Lack of foundation.</p> <p>11 THE WITNESS: Well, I have to</p> <p>12 say that we never, even though we</p> <p>13 would recognize an issue, UEP, our</p> <p>14 first priority was with the egg</p> <p>15 producer, period. And so we</p> <p>16 weren't -- from that standpoint, we</p> <p>17 weren't -- other than what the problem</p> <p>18 was, we weren't concerned whether the</p> <p>19 processors made any money or not, I</p> <p>20 mean honestly.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. I'm just referring to this</p> <p>23 discussion about unifying the industry.</p> <p>24 What, if anything, did UEP do to unify the</p> <p>25 industry?</p>

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<p style="text-align: right;">74</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question. Lacks foundation.</p> <p>4 THE WITNESS: The biggest thing</p> <p>5 was we closed down the regions.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. How did that help unify the</p> <p>8 industry?</p> <p>9 A. Well, basically you had -- when</p> <p>10 you have five regions like we had, you have</p> <p>11 five general managers, you have five cars,</p> <p>12 you have five offices, you have five member</p> <p>13 services people, you have five of everything,</p> <p>14 you just multiply everything. Then when you</p> <p>15 have five managers, you always have five</p> <p>16 different boards of directors. And it was</p> <p>17 just a cumbersome structure. So what we</p> <p>18 gained out of changing that was tremendously</p> <p>19 more input from the producers. We expanded</p> <p>20 our board so more producers could be</p> <p>21 represented on the board. And it just made</p> <p>22 it more efficient. And when we worked on</p> <p>23 issues, we all worked on them at the same</p> <p>24 time.</p> <p>25 Q. Another thing that is referred</p>	<p style="text-align: right;">76</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 reputation as it relates to management</p> <p>3 skills. And so they asked us if we could do</p> <p>4 that. Well, we had developed the UEA</p> <p>5 organization. Its major function was to</p> <p>6 house our pack.</p> <p>7 Q. So let's just make sure we</p> <p>8 understand what we're talking about. So the</p> <p>9 UEA is an association that was within UEP?</p> <p>10 A. Not within UEP. It was just we</p> <p>11 just managed it for them.</p> <p>12 Q. It was an association that you</p> <p>13 managed?</p> <p>14 A. They didn't even have a</p> <p>15 telephone. You know what I mean? Just, you</p> <p>16 know.</p> <p>17 Q. Right. UEP --</p> <p>18 A. We just provide management</p> <p>19 services for them.</p> <p>20 Q. And you say they didn't have a</p> <p>21 telephone, your point is UEP did all the</p> <p>22 managing for them. Correct?</p> <p>23 MS. LEVINE: Objection to the</p> <p>24 form of the question.</p> <p>25 Mischaracterizes the witness'</p>
<p style="text-align: right;">75</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 to in this article, if you look sort of the</p> <p>3 bottom half of page 2, is the formation of</p> <p>4 United Egg Association.</p> <p>5 A. Yes.</p> <p>6 Q. Tell us about the formation of</p> <p>7 that and why it was formed.</p> <p>8 A. USDA gave us a call and said,</p> <p>9 you know, we run -- they run an inspection</p> <p>10 program for shell eggs, and they also run a</p> <p>11 program for further processed eggs. USDA, a</p> <p>12 guy by the name of Connor Kennett, called me</p> <p>13 and said that the further egg processors up</p> <p>14 until maybe two years before this date had an</p> <p>15 organization called Poultry and Egg Institute</p> <p>16 of America or something like that. I don't</p> <p>17 remember. And they had a committee that</p> <p>18 represented the further egg processor. So</p> <p>19 USDA said to our chairman and to me and --</p> <p>20 whether or not UEP could provide management</p> <p>21 services for our small little trade</p> <p>22 association. They didn't want to hire</p> <p>23 anybody. They didn't have that -- they</p> <p>24 didn't have a lot of resources or anything.</p> <p>25 So we had really gained, I think, a good</p>	<p style="text-align: right;">77</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 testimony.</p> <p>3 THE WITNESS: The only functions</p> <p>4 that we really provided was calling a</p> <p>5 meeting for the further egg processors</p> <p>6 when they wanted an annual meeting or</p> <p>7 something like that. And then they</p> <p>8 would discuss whatever their issues</p> <p>9 were.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. And what else did UEP do to</p> <p>12 manage UEA?</p> <p>13 A. We kept separate books for</p> <p>14 them. I mean and the books, I mean, there</p> <p>15 are dues and we send the billing out and then</p> <p>16 they -- everything they -- they were</p> <p>17 responsible for the board. Their board was</p> <p>18 responsible for whatever UEA did.</p> <p>19 Q. So this article says, Pope said</p> <p>20 formation -- sorry. So the UEA represented</p> <p>21 breakers and further processors. Correct?</p> <p>22 A. Just a minute. What did you</p> <p>23 say, UEA what?</p> <p>24 Q. UEA represented -- well, as I</p> <p>25 understand it, there were three divisions of</p>

20 (Pages 74 to 77)



<p style="text-align: right;">78</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 UEA.</p> <p>3 A. Yes.</p> <p>4 Q. There was the allied division?</p> <p>5 A. Yes.</p> <p>6 Q. And who is in the allied</p> <p>7 division, what type of companies?</p> <p>8 A. The company that would supply</p> <p>9 the industry with cages or whatever.</p> <p>10 Q. There's the further processors?</p> <p>11 A. Yes.</p> <p>12 Q. Who is that?</p> <p>13 A. That would be people that</p> <p>14 process eggs, breakers, referred to as</p> <p>15 breakers.</p> <p>16 Q. And there are producer packers</p> <p>17 as well?</p> <p>18 A. Yes.</p> <p>19 Q. Who are they?</p> <p>20 A. A producer packer, for whatever</p> <p>21 the reason, did not want to be in a</p> <p>22 cooperative. So they had a vehicle that they</p> <p>23 could belong to.</p> <p>24 Q. And this article says, Pope</p> <p>25 said formation of the United Egg Association,</p>	<p style="text-align: right;">80</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 UEP meetings. Correct?</p> <p>3 MS. LEVINE: Object to the form</p> <p>4 of the question.</p> <p>5 THE WITNESS: UEP's meetings</p> <p>6 were open. If you wanted to come, you</p> <p>7 could come to the UEP board meeting.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Including UEA members.</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. They -- UEA members were sent</p> <p>13 the United Voices newsletter?</p> <p>14 A. Pardon?</p> <p>15 Q. Were UEA members sent the</p> <p>16 United Voices newsletters?</p> <p>17 A. Yes.</p> <p>18 Q. Were UEA members permitted to</p> <p>19 express their views at UEP meetings?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 THE WITNESS: If you went to the</p> <p>23 UEP meeting and we were talking on a</p> <p>24 subject that you wanted to express</p> <p>25 your view on, you're free to do that.</p>
<p style="text-align: right;">79</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 (UEA)...brought together all sectors of the</p> <p>3 egg industry in one structure to communicate</p> <p>4 on and coordinate matters of mutual interest.</p> <p>5 Do you see that?</p> <p>6 A. Yes, I saw that.</p> <p>7 Q. Is that consistent with your</p> <p>8 knowledge?</p> <p>9 A. No, not quite. I just phrased</p> <p>10 it wrong. Because they -- there's no way egg</p> <p>11 producers are going to tell the breakers how</p> <p>12 to run their business. And we were strictly</p> <p>13 there because nobody else would do it.</p> <p>14 Q. Now, UEA members attended UEP</p> <p>15 meetings. Correct?</p> <p>16 A. Generally, no. There were --</p> <p>17 there was a few maybe.</p> <p>18 Q. They were allowed to attend UEP</p> <p>19 meetings?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question. Be specific about</p> <p>22 which meetings.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. There was nothing -- there was</p> <p>25 no rule stopping UEA members from attending</p>	<p style="text-align: right;">81</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. And UEA members could do that,</p> <p>4 too. Right?</p> <p>5 A. UEA members could do that, too.</p> <p>6 Q. Now, on the bottom of the</p> <p>7 page 2 of this document, there's a discussion</p> <p>8 about UEP's work in animal welfare.</p> <p>9 A. Yes.</p> <p>10 Q. You saw that when you skimmed</p> <p>11 the article?</p> <p>12 A. Yes.</p> <p>13 Q. The article says that Pope</p> <p>14 recalled how in the early 1980s UEP wrote</p> <p>15 animal welfare guidelines based only and</p> <p>16 simply on how producers took care of their</p> <p>17 birds at the time. It prompted "heated</p> <p>18 debate in the industry, and they were just</p> <p>19 milk toast guidelines..."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is that consistent with your</p> <p>23 knowledge?</p> <p>24 MS. LEVINE: Can you tell us</p> <p>25 where you're reading?</p>

21 (Pages 78 to 81)

<p style="text-align: right;">82</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Yeah. The bottom of</p> <p>3 page 2.</p> <p>4 THE WITNESS: That was his words</p> <p>5 on there. I don't know, but, yes,</p> <p>6 that's what I recall from the '80s, we</p> <p>7 did draft some guidelines.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. And what was the reason for</p> <p>10 drafting those guidelines in the 1980s?</p> <p>11 A. I don't have a short</p> <p>12 explanation, but I'll explain why we did it,</p> <p>13 if you want.</p> <p>14 Q. Let's try it.</p> <p>15 A. Okay. For 30 years one of our</p> <p>16 responsibilities was the U.S. representative</p> <p>17 at the International Egg Commission. So --</p> <p>18 and I, being the delegate, went there for</p> <p>19 those 20 years, and watched what happened to</p> <p>20 the animal welfare movement firsthand. I saw</p> <p>21 and actually was there when animal welfarists</p> <p>22 would demonstrate in front of what would be</p> <p>23 our customers, the retail stores. They would</p> <p>24 have a, you know, 4-by-8, 4-by-10 table set</p> <p>25 up and they would have chickens with the eyes</p>	<p style="text-align: right;">84</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 an open meeting or if it was a public company</p> <p>3 where they could buy stock in and then they</p> <p>4 could come in and give them a voice at their</p> <p>5 stock meetings. It was just horrendous what</p> <p>6 was going on. And I'm sure that you were</p> <p>7 exposed to things that PETA has done that</p> <p>8 have been totally outrageous.</p> <p>9 Q. Could I just make sure we have</p> <p>10 the timeline correct?</p> <p>11 A. Yes. This is --</p> <p>12 MS. LEVINE: Mr. Olson, you</p> <p>13 asked a question, the witness is</p> <p>14 giving an answer. Do not interrupt</p> <p>15 the witness in the middle of an</p> <p>16 answer. When he is finished his</p> <p>17 answer, you can ask follow up.</p> <p>18 Go ahead, Mr. Pope.</p> <p>19 THE WITNESS: So this was in the</p> <p>20 late '70s and all through the '80s and</p> <p>21 right up -- I mean, it just hasn't</p> <p>22 stopped. And I feel sorry for the</p> <p>23 producers in those countries, because</p> <p>24 they had nobody speaking for them and</p> <p>25 they just -- they're just are always</p>
<p style="text-align: right;">83</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 out. They would have chickens with no</p> <p>3 feathers on. They would have chickens</p> <p>4 with -- you know, then if you walked out of</p> <p>5 the store, you were harassed by animal</p> <p>6 welfare people. They had little bottles of</p> <p>7 blood that they would -- and it wasn't</p> <p>8 probably really blood, I don't know, they</p> <p>9 would just splash it on people. You know, so</p> <p>10 I'm looking at it and I'm thinking, you know,</p> <p>11 our producers, they're so far away from this,</p> <p>12 I mean, I don't think that will ever happen</p> <p>13 in the U.S. Well, it did happen here.</p> <p>14 So my first thoughts were at</p> <p>15 that time what can we do to be a responsible</p> <p>16 industry to have answers for our producers so</p> <p>17 that they're not caught off guard like the</p> <p>18 Europeans were. So what happened in Europe</p> <p>19 is because they had no producer voice, they</p> <p>20 just -- whatever happens to them, happens to</p> <p>21 them. So you had Belgium with guidelines,</p> <p>22 you had France with guidelines, you had U.K.</p> <p>23 with guidelines. Everything was different.</p> <p>24 And they were all taken different tasks.</p> <p>25 They'd come to the board meetings, if it was</p>	<p style="text-align: right;">85</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 perceived as the bad guys. You know,</p> <p>3 farmers are very jealous of that. I</p> <p>4 mean, here in the U.S., when we had</p> <p>5 90 percent of our population working</p> <p>6 in agriculture, they loved</p> <p>7 agriculture. Now, not so much; you</p> <p>8 know, kids think that milk comes from</p> <p>9 the grocery store, they don't think</p> <p>10 about the cow or the chicken or</p> <p>11 anything else. So what do we do?</p> <p>12 We're a little organization, we don't</p> <p>13 have a lot of resources.</p> <p>14 So I came back and I -- actually</p> <p>15 I had just gotten a mailing from some</p> <p>16 animal welfare group, I can't</p> <p>17 remember, and they had their members</p> <p>18 send me a postcard saying, you know,</p> <p>19 you should be kept in a cage. You</p> <p>20 should be -- we get these threats</p> <p>21 coming in. I wish I could put you in</p> <p>22 a cage. And so these cards started</p> <p>23 coming in, and it was thousands of</p> <p>24 them. We're talking about 100</p> <p>25 producers and we're talking about</p>

22 (Pages 82 to 85)

<p style="text-align: right;">86</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 thousands of customers out there that</p> <p>3 are -- don't understand really the</p> <p>4 housing. Okay, so, we came back and</p> <p>5 we made an attempt. And when I say we</p> <p>6 made an attempt and that it was hard,</p> <p>7 I mean literally, I had producers</p> <p>8 standing on the chair saying there is</p> <p>9 no GD telling me how much square</p> <p>10 inches my birds are going to have.</p> <p>11 Nobody is going to tell me that.</p> <p>12 So -- okay.</p> <p>13 So then we make up these</p> <p>14 guidelines, and they were very</p> <p>15 general. When I say milk toast, they</p> <p>16 were a producer should do this or he</p> <p>17 should do that. All these little</p> <p>18 weasel words that you guys like.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. I thought we were getting</p> <p>21 along.</p> <p>22 A. Then take me to task on. So</p> <p>23 anyhow, here we were faced with this. How</p> <p>24 does an organization -- you know, you got to</p> <p>25 remember, you guys are around here, we've</p>	<p style="text-align: right;">88</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 a long question. You asked for it.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. I'm asking a follow-up</p> <p>5 question. The question is, did those</p> <p>6 guidelines that were instituted in the early</p> <p>7 1980s, did they lead to any changes --</p> <p>8 MS. LEVINE: You can now --</p> <p>9 BY MR. OLSON:</p> <p>10 Q. -- in any production?</p> <p>11 A. No, I would have no idea. I</p> <p>12 don't know what they did. But I can't stop</p> <p>13 there.</p> <p>14 Q. Well, that's what my question</p> <p>15 was about.</p> <p>16 A. I can't stop there.</p> <p>17 Q. Now, the article goes on to say</p> <p>18 in the late 1990s, you saw what was happening</p> <p>19 in Europe, and it says you suggested that</p> <p>20 U.S. egg producers needed to write new</p> <p>21 guidelines?</p> <p>22 A. Yes.</p> <p>23 Q. Is that accurate?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">87</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 never had anywhere near this many people</p> <p>3 working for UEP. I mean, we basically had --</p> <p>4 at the time this came up, there was two of us</p> <p>5 and we're handling all the issues. One time</p> <p>6 it's going to be this. Okay.</p> <p>7 So what we decided to do is we</p> <p>8 decided to come up with guidelines.</p> <p>9 Producers got upset about it, but those</p> <p>10 guidelines served us pretty good. I say</p> <p>11 pretty good because, again, it was all</p> <p>12 voluntary, they were not what I would call</p> <p>13 hardline guidelines.</p> <p>14 Q. Did they lead to any changes?</p> <p>15 A. Pardon?</p> <p>16 Q. Did they lead to any changes?</p> <p>17 MS. LEVINE: Let the witness</p> <p>18 finish his statement, then you can ask</p> <p>19 a question. Don't -- please don't</p> <p>20 interrupt the witness.</p> <p>21 MR. OLSON: Well --</p> <p>22 MS. LEVINE: He told you --</p> <p>23 MR. OLSON: He answered the last</p> <p>24 question.</p> <p>25 MS. LEVINE: He told you it was</p>	<p style="text-align: right;">89</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. I mean at the time --</p> <p>3 Q. Now, let me ask --</p> <p>4 MS. LEVINE: Let the witness</p> <p>5 finish the question.</p> <p>6 MR. OLSON: He answered the</p> <p>7 question.</p> <p>8 MS. LEVINE: You didn't finish.</p> <p>9 Do you have anything else to say, Mr.</p> <p>10 Pope?</p> <p>11 MR. OLSON: No. He answered the</p> <p>12 question. He doesn't just get to say</p> <p>13 whatever he wants to say.</p> <p>14 MS. ANDERSON: He was in the</p> <p>15 middle of a sentence.</p> <p>16 MS. LEVINE: Well, you can't cut</p> <p>17 off the witness, Mr. Olson.</p> <p>18 MR. OLSON: It was a yes or no</p> <p>19 question and he answered it.</p> <p>20 MS. LEVINE: No, it was not. He</p> <p>21 was in the middle of a sentence.</p> <p>22 MR. OLSON: I'm not going to</p> <p>23 debate you about it. It was a yes or</p> <p>24 no question.</p> <p>25 BY MR. OLSON:</p>

23 (Pages 86 to 89)



<p style="text-align: right;">90</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now, what was -- who did you</p> <p>3 make that suggestion to?</p> <p>4 A. The UEP board. I remember --</p> <p>5 Q. And do you recall when you did</p> <p>6 that?</p> <p>7 A. I don't recall the year, but I</p> <p>8 specifically remember the board meeting</p> <p>9 because I thought I wasn't going to survive</p> <p>10 the board meeting. That's how emotional this</p> <p>11 issue is with producers.</p> <p>12 Q. Producers didn't like the idea</p> <p>13 at first, is that what you're saying?</p> <p>14 A. They hated it. I mean, you</p> <p>15 know, we don't ask for any government</p> <p>16 subsidies, we don't want any price support,</p> <p>17 we don't want anything. We want to be left</p> <p>18 alone and just produce eggs. That's it. And</p> <p>19 the way that this was going, we were going to</p> <p>20 have to respond to it somehow. So, yes, I</p> <p>21 came to the board at the meeting in San</p> <p>22 Antonio. Gene and I almost lost our jobs</p> <p>23 over it, but the board gave us the approval</p> <p>24 to move ahead to try to update our</p> <p>25 guidelines. That's when the second phase all</p>	<p style="text-align: right;">92</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 recall that? Do you recall being given that</p> <p>3 award, not do you recall this document?</p> <p>4 A. Yes, I remember getting the</p> <p>5 award, yes.</p> <p>6 Q. So this just has a timeline, I</p> <p>7 just want to check on a couple of things. If</p> <p>8 you look on the first page, it says, "May</p> <p>9 1981 - UEP's first Animal Welfare Committee</p> <p>10 conducts meeting." Is that consistent with</p> <p>11 your knowledge?</p> <p>12 A. Excuse me. Where is this one?</p> <p>13 This is on the bottom half of the first page?</p> <p>14 Q. Yeah, May 1981.</p> <p>15 A. First animal -- yes, "...first</p> <p>16 Animal Welfare...conducts meeting." Okay.</p> <p>17 Q. Then it says, "May 1982 - UEP's</p> <p>18 Animal Welfare Committee completes the</p> <p>19 Husbandry Guidelines and Situations Statement</p> <p>20 of the Egg Industry."</p> <p>21 Do you see that?</p> <p>22 A. You're testing my memory on all</p> <p>23 this, but I have to just go by what's here.</p> <p>24 MS. LEVINE: Just --</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">91</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 started.</p> <p>3 MR. OLSON: We'll obviously get</p> <p>4 to that.</p> <p>5 MS. LEVINE: Mr. Olson, I'm just</p> <p>6 going to say I think the witness is</p> <p>7 getting a little tired. When you</p> <p>8 finish with the document you're on,</p> <p>9 you're at a good stopping place, I</p> <p>10 think a break would be a good idea.</p> <p>11 MR. OLSON: That sounds good.</p> <p>12 - - -</p> <p>13 (Exhibit Pope-2, Al Pope's</p> <p>14 History with UEP, Bates UE0754417 -</p> <p>15 UE0754424, was marked for</p> <p>16 identification.)</p> <p>17 - - -</p> <p>18 BY MR. OLSON:</p> <p>19 Q. I've just handed you what has</p> <p>20 been marked Pope-2. The Bates numbers are</p> <p>21 UE0754417 through 24. It's titled, "AL</p> <p>22 POPE'S HISTORY WITH UEP." And I believe, Mr.</p> <p>23 Pope, that this was prepared in connection</p> <p>24 with you being given an award in October of</p> <p>25 1999 as egg producer of the year. Do you</p>	<p style="text-align: right;">93</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. My question is really, do you</p> <p>3 have any reason to doubt that that's the</p> <p>4 right general period?</p> <p>5 A. No, I don't have no reason to</p> <p>6 doubt that.</p> <p>7 Q. If we wanted to find a copy of</p> <p>8 those guidelines, do you know where we could</p> <p>9 go?</p> <p>10 A. Just call up UEP and ask for</p> <p>11 them. The guidelines.</p> <p>12 Q. UEP would still have them?</p> <p>13 A. Yes. These guidelines that</p> <p>14 we're talking about here are prior to our</p> <p>15 certification program.</p> <p>16 Q. Understood.</p> <p>17 A. Okay.</p> <p>18 Q. Let's look on the third page</p> <p>19 in, there's a July 1995 entry. It says, "UEP</p> <p>20 holds an emergency economic summit</p> <p>21 meeting..." I'll wait until you're there.</p> <p>22 A. July, okay.</p> <p>23 Q. 1995. Do you see it?</p> <p>24 A. I must be on the wrong page.</p> <p>25 Oh, yes.</p>

24 (Pages 90 to 93)

<p style="text-align: right;">94</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. You see it. And it says, "UEP</p> <p>3 holds an emergency economic summit meeting to</p> <p>4 consider programs to balance supply with</p> <p>5 demand."</p> <p>6 Do you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. What's an economic summit</p> <p>9 meeting?</p> <p>10 A. Well, it's nothing more like</p> <p>11 having Don Bell come in, give them, you know,</p> <p>12 the -- give them the statistics and included</p> <p>13 any party that was interested in the</p> <p>14 industry. I mean, you know, even Allied</p> <p>15 Industry obviously is an interested party</p> <p>16 because they couldn't tell whether there's</p> <p>17 going to be -- whether it's going to be</p> <p>18 economically good for them or not, you know,</p> <p>19 things like that. So that was what I meant</p> <p>20 by a joint effort. A joint get together.</p> <p>21 Q. Now, if you look to the entry</p> <p>22 on October 1998, please. This is on the</p> <p>23 fourth page.</p> <p>24 A. October 1998, okay.</p> <p>25 Q. It says, "UEP forms Scientific</p>	<p style="text-align: right;">96</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. You know, I don't remember. I</p> <p>3 might have attended one, but my general rule,</p> <p>4 I didn't attend them.</p> <p>5 Q. As a general rule, did anyone</p> <p>6 from UEP attend the scientific --</p> <p>7 A. Well, we always had one because</p> <p>8 we've got to put the meeting together, you</p> <p>9 know, so we always had at least one. But</p> <p>10 we -- those meetings were limited to that.</p> <p>11 We didn't -- they weren't -- they just</p> <p>12 weren't open meetings. They were just</p> <p>13 meetings, they're work meetings.</p> <p>14 Q. This is what I just want to</p> <p>15 understand. The Scientific Advisory</p> <p>16 Committee was there and at least one person</p> <p>17 from UEP --</p> <p>18 A. Yes.</p> <p>19 Q. -- would be there. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. And generally who would that</p> <p>22 person be?</p> <p>23 A. It would be Gene Gregory.</p> <p>24 Q. And --</p> <p>25 A. Okay.</p>
<p style="text-align: right;">95</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Advisory Committee for Animal Welfare."</p> <p>3 Do you see that?</p> <p>4 A. Is it in the top half or the</p> <p>5 bottom?</p> <p>6 Q. The very end, October 1998.</p> <p>7 A. Okay. Right.</p> <p>8 Q. Do you see it?</p> <p>9 A. Yes.</p> <p>10 Q. Who formed the Scientific</p> <p>11 Advisory Committee?</p> <p>12 A. Well, our board as a</p> <p>13 recommendation from staff.</p> <p>14 Q. Were the members of that</p> <p>15 committee compensated?</p> <p>16 A. No. Except for travel.</p> <p>17 Q. Did that committee hold</p> <p>18 meetings, regular meetings?</p> <p>19 A. They hold meetings irregular.</p> <p>20 Q. They held meetings?</p> <p>21 A. They held meetings, yes.</p> <p>22 Q. But not necessarily on a</p> <p>23 regular basis?</p> <p>24 A. Right. Yeah.</p> <p>25 Q. Did you attend those meetings?</p>	<p style="text-align: right;">97</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Stick with me. And then were</p> <p>3 there other people who would generally attend</p> <p>4 the meetings?</p> <p>5 A. Occasionally our chairman would</p> <p>6 attend.</p> <p>7 Q. Would it be Mr. Gregory who was</p> <p>8 responsible for keeping minutes?</p> <p>9 MS. LEVINE: Objection to the form</p> <p>10 of the question. Lack of foundation.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Strike that.</p> <p>13 Were minutes kept of the</p> <p>14 Scientific Advisory Committee meetings?</p> <p>15 A. You know, I'm not sure.</p> <p>16 Q. Were records retained regarding</p> <p>17 the Scientific Advisory Committee meetings?</p> <p>18 MS. ANDERSON: Objection to</p> <p>19 form.</p> <p>20 MS. LEVINE: Objection to form</p> <p>21 of the question.</p> <p>22 THE WITNESS: Yeah.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. While you were at UEP, if you</p> <p>25 wanted to go back and look for what happened</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">98</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 at these meetings, what would you do?</p> <p>3 A. Somewhere there would be a</p> <p>4 folder on the Scientific Advisory Committee,</p> <p>5 I would hope that they were in there.</p> <p>6 Q. Did the Scientific --</p> <p>7 A. I never had to do that,</p> <p>8 however.</p> <p>9 Q. Did the Scientific Advisory</p> <p>10 Committee generate a work product as a result</p> <p>11 of its efforts?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question. What you mean by</p> <p>14 "work product"?</p> <p>15 THE WITNESS: Eventually. I</p> <p>16 mean, their responsibility directed</p> <p>17 from the board was to obtain and look</p> <p>18 at research as it related to animal</p> <p>19 welfare, and to the best of their</p> <p>20 ability was to establish suggested</p> <p>21 guidelines, based on science, how our</p> <p>22 animals should be cared for.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. Did the Scientific Advisory</p> <p>25 Committee generate a written report, to your</p>	<p style="text-align: right;">100</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Let's just start, can you</p> <p>3 identify this document for the record,</p> <p>4 please?</p> <p>5 A. First of all, I have no idea</p> <p>6 whether I've ever seen it before, but --</p> <p>7 Q. The type of document?</p> <p>8 A. It's a document that we've seen</p> <p>9 a number of times. See, they're also part of</p> <p>10 the cooperative extension service which is</p> <p>11 part of the USDA, so...</p> <p>12 Q. When you say "we've seen a</p> <p>13 number of time," you mean UEP?</p> <p>14 A. Everybody. Everybody. UEP.</p> <p>15 We would put -- maybe attach it to a</p> <p>16 newsletter or something like that for</p> <p>17 producer's information.</p> <p>18 Q. What is an egg economics update</p> <p>19 generally?</p> <p>20 A. I'm going to say it just --</p> <p>21 usually it's just as a pulse on the industry</p> <p>22 at whatever point you're trying to cover.</p> <p>23 Q. The economic issues facing the</p> <p>24 egg industry?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">99</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 knowledge?</p> <p>3 A. I don't know.</p> <p>4 MR. OLSON: Let's take a break.</p> <p>5 MS. LEVINE: Now we're off the</p> <p>6 record.</p> <p>7 VIDEOGRAPHER: The time is</p> <p>8 approximately 10:27 a.m. This ends</p> <p>9 tape one. We are off the record.</p> <p>10 - - -</p> <p>11 (A recess was taken.)</p> <p>12 - - -</p> <p>13 (Exhibit Pope-3, Egg Economic</p> <p>14 Update, Bates KRGE00020640 -</p> <p>15 KRGE00020643, was marked for</p> <p>16 identification.)</p> <p>17 - - -</p> <p>18 VIDEOGRAPHER: The time is</p> <p>19 approximately 10:41 a.m. This begins</p> <p>20 tape two. We are back on the record.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Okay, Mr. Pope, I've handed you</p> <p>23 what we've marked Pope-3. It's Bates stamped</p> <p>24 KRGE00020640 through 43, dated April 15,</p> <p>25 1994, entitled, "EGG ECONOMICS UPDATE."</p>	<p style="text-align: right;">101</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. This one is authored by Don</p> <p>3 Bell. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Was he the person who authored</p> <p>6 these reports always?</p> <p>7 A. Well, not always, but</p> <p>8 periodically he would.</p> <p>9 Q. Was there anyone else who</p> <p>10 authored egg economics updates?</p> <p>11 A. There was lots of them. I</p> <p>12 mean, you had individual companies would do</p> <p>13 it. And there would be people that are not</p> <p>14 even in the industry. They'd be maybe at the</p> <p>15 time Chicago Board of Trade or could have</p> <p>16 been any number. And basically we just -- we</p> <p>17 passed the information on to a producer.</p> <p>18 Q. To the UEP members. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, this --</p> <p>21 A. No, there was UEA members on</p> <p>22 that list as well.</p> <p>23 Q. And UEA members. Thank you.</p> <p>24 How about USEM members?</p> <p>25 A. No.</p>

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<p style="text-align: right;">102</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And why is that?</p> <p>3 A. We didn't have anything to do</p> <p>4 with them at the time. We didn't do anything</p> <p>5 with USEM marketers at the time.</p> <p>6 Q. We'll get to that one later.</p> <p>7 This one is entitled, "WHEN</p> <p>8 MORE MEANS LESS!"</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And it begins by saying that</p> <p>12 "...the recent UEP Board of Directors meeting</p> <p>13 in Phoenix, Arizona, Ken Looper reviewed the</p> <p>14 procedures he uses for projecting the</p> <p>15 nation's laying flock each month."</p> <p>16 A. Uh-huh.</p> <p>17 Q. Mr. Looper would make</p> <p>18 projections at this time in the mid-'90s. Is</p> <p>19 that right?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Strike that.</p> <p>24 What was Mr. Bell referring to</p> <p>25 about Mr. Looper's projections?</p>	<p style="text-align: right;">104</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. What is the relationship</p> <p>3 between the chairman and the president?</p> <p>4 A. Like any other board, we really</p> <p>5 liked and encouraged a strong chairman,</p> <p>6 because we were a producer organization and</p> <p>7 we wanted us to be perceived. However, as</p> <p>8 you can imagine, the strength of your</p> <p>9 chairmanships, which is a two-year term, can</p> <p>10 go up and down. I mean how involved they are</p> <p>11 and how involved they aren't. So whenever</p> <p>12 they're -- the chairman chooses not to take a</p> <p>13 great participation except at the board</p> <p>14 meeting, unfortunately that raises the</p> <p>15 profile of the staff. We prefer not to do</p> <p>16 that.</p> <p>17 Q. And as president, you were on</p> <p>18 the board as well. Is that right?</p> <p>19 A. No.</p> <p>20 Q. You were not on the board?</p> <p>21 A. I'm not a member of the board,</p> <p>22 no.</p> <p>23 Q. So going back to this document,</p> <p>24 on the first page after the chart Mr. Bell</p> <p>25 writes, "One of the most important numbers</p>
<p style="text-align: right;">103</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question. This witness doesn't</p> <p>4 know.</p> <p>5 MR. OLSON: Please don't testify</p> <p>6 for the witness.</p> <p>7 THE WITNESS: First of all, I</p> <p>8 don't profess to know anything about</p> <p>9 the statistics that they're sharing,</p> <p>10 showing to the board members. We have</p> <p>11 various members that would have varied</p> <p>12 interest in specific areas. And we</p> <p>13 had a number of producers that did</p> <p>14 their own economic analysis. And from</p> <p>15 time to time they shared that with the</p> <p>16 board.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Do you recall Mr. Looper's role</p> <p>19 at UEP at this time?</p> <p>20 A. You know, at this time I don't.</p> <p>21 He might have been our chairman at the time.</p> <p>22 I don't really remember that.</p> <p>23 Q. At some point he was chairman.</p> <p>24 Correct?</p> <p>25 A. At some point he was chairman.</p>	<p style="text-align: right;">105</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Ken projects each month is the expected</p> <p>3 number of layers for the next year."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. "This number, along with its</p> <p>7 associated production, are two of the best</p> <p>8 predictors of future profits that we have."</p> <p>9 Do you see that?</p> <p>10 A. Yes, that's what he said.</p> <p>11 Remember I didn't say this, because I don't</p> <p>12 have any idea.</p> <p>13 Q. My question is, do you have an</p> <p>14 understanding of why the expected number of</p> <p>15 layers for the next year was considered by</p> <p>16 Mr. Bell to be a predictor of future profits?</p> <p>17 MS. LEVINE: Object to the form</p> <p>18 of the question.</p> <p>19 THE WITNESS: Well, the</p> <p>20 individual producer has got to decide</p> <p>21 whether it's helpful to them or not.</p> <p>22 I don't really know. From our</p> <p>23 standpoint, I look at our role as a</p> <p>24 communications link, so we felt the</p> <p>25 more information we can give a</p>

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<p style="text-align: right;">106</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 producer, the better they can make a</p> <p>3 decision on what to do.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. I'm just asking for your</p> <p>6 understanding based on being the president of</p> <p>7 UEP for over three decades.</p> <p>8 A. Yeah.</p> <p>9 Q. What is your understanding of</p> <p>10 the most important predictors of</p> <p>11 profitability for the egg industry?</p> <p>12 A. I don't know.</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question.</p> <p>15 MR. OLSON: What's the</p> <p>16 objection?</p> <p>17 MS. ANDERSON: Form and</p> <p>18 foundation.</p> <p>19 MR. OLSON: What's the form</p> <p>20 objection?</p> <p>21 MS. ANDERSON: Your statement is</p> <p>22 vague and ambiguous. I don't</p> <p>23 understand your question.</p> <p>24 MR. OLSON: Okay. Thank you.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">108</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 know. That's fine.</p> <p>3 A. Okay.</p> <p>4 Q. At the end, the last full</p> <p>5 paragraph says, Mr. Bell writes, "The U.S.</p> <p>6 has no way to control its flock size other</p> <p>7 than through the persuasive influence of</p> <p>8 trade associations such as UEP."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And then he writes, "On-going</p> <p>12 efforts to warn the industry of impending</p> <p>13 over-production and industry cooperation to</p> <p>14 correct the problem before it becomes one</p> <p>15 means 'money in the bank' for the entire</p> <p>16 industry."</p> <p>17 Do you see that?</p> <p>18 A. I see that.</p> <p>19 Q. Do you have an understanding of</p> <p>20 what Mr. Bell was referring to by "industry</p> <p>21 cooperation"?</p> <p>22 A. Well, no, I don't. You have to</p> <p>23 ask Mr. Bell. But also I have to correct</p> <p>24 because Don is referring to UEP as a</p> <p>25 persuasive influence of trade association</p>
<p style="text-align: right;">107</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Would you like me to ask it</p> <p>3 again?</p> <p>4 A. Would you?</p> <p>5 MS. LEVINE: The witness</p> <p>6 answered the question.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Based on your having served as</p> <p>9 the president of UEP for over three</p> <p>10 decades --</p> <p>11 A. Yeah.</p> <p>12 Q. -- what is your view on the</p> <p>13 best predictors of profitability in the egg</p> <p>14 industry?</p> <p>15 MS. ANDERSON: Same objection.</p> <p>16 MS. LEVINE: Asked and answered.</p> <p>17 THE WITNESS: Well, the answer</p> <p>18 is I don't know. I mean, there may be</p> <p>19 six, eight or ten of them, I have no</p> <p>20 idea.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. If you look at page 4 at the</p> <p>23 very end.</p> <p>24 A. And it wasn't -- and it also --</p> <p>25 Q. If you don't know, you don't</p>	<p style="text-align: right;">109</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 such as UEP. Obviously we're not a trade</p> <p>3 association.</p> <p>4 Q. And you certainly would never</p> <p>5 refer to UEP as a trade association?</p> <p>6 A. No.</p> <p>7 Q. And you having served as the</p> <p>8 president of UEP for over three decades</p> <p>9 working with Mr. Bell during that time --</p> <p>10 A. I didn't --</p> <p>11 Q. -- have no idea what his</p> <p>12 reference to industry cooperation means. Is</p> <p>13 that right?</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question.</p> <p>16 THE WITNESS: Again, you have to</p> <p>17 ask Don Bell.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Okay.</p> <p>20 A. I don't want to answer for Don</p> <p>21 because certainly may not be the same thing.</p> <p>22 Q. Let's try it again then. I'm</p> <p>23 not asking you to answer for Mr. Bell. I'm</p> <p>24 just asking if you have an understanding of</p> <p>25 what this reference to industry cooperation</p>

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<p style="text-align: right;">110</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 to correct the problem means?</p> <p>3 MS. LEVINE: Object to the form</p> <p>4 of the question.</p> <p>5 THE WITNESS: I don't know. I</p> <p>6 don't know. You're going to have to</p> <p>7 ask Don. My interpretation of it</p> <p>8 would be the only one that can</p> <p>9 basically affect that is the egg</p> <p>10 producer. So I would think that he</p> <p>11 would be directing it to egg</p> <p>12 producers.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. So is it your testimony, sir,</p> <p>15 that UEP members never cooperated to try to</p> <p>16 address production issues?</p> <p>17 A. You know, it's a loaded</p> <p>18 question. No, we didn't.</p> <p>19 Q. Okay. You can put that aside.</p> <p>20 - - -</p> <p>21 (Exhibit Pope-4, 3/17/95 Letter,</p> <p>22 Bates BELL-D-00032755, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">112</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. -- office at University of</p> <p>4 California. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. In this letter, Mr. Bell is --</p> <p>7 he begins by saying, "Dear Al, I see that</p> <p>8 some of your members are bashing 'molting'</p> <p>9 again."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And having reviewed the</p> <p>13 document, do you know what Mr. Bell is</p> <p>14 referring to?</p> <p>15 A. I have no idea.</p> <p>16 Q. Do you recall discussions by</p> <p>17 UEP members about molting around this time?</p> <p>18 A. No.</p> <p>19 Q. Do you see in the third full</p> <p>20 paragraph where Mr. Bell says, "Molting is</p> <p>21 done to save costs - not to produce more or</p> <p>22 as many eggs"?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. Based on your experience as</p> <p>25 president of UEP, do you know what the</p>
<p style="text-align: right;">111</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let me hand you what's been</p> <p>3 marked Pope-4. I'll ask you to briefly</p> <p>4 review it. Let me know when you're done,</p> <p>5 please. And for the record, this is a</p> <p>6 document that's Bates stamped</p> <p>7 BELL-D-00032755.</p> <p>8 Mr. Pope, can you identify this</p> <p>9 as a letter written to you by Mr. Bell dated</p> <p>10 March 17, 1995?</p> <p>11 A. I only recognize it as it was</p> <p>12 addressed to me, but I don't recall any of</p> <p>13 the information even in the letter, so I</p> <p>14 don't know.</p> <p>15 Q. But you see it dated March 17,</p> <p>16 1995. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it's signed by Mr. Bell.</p> <p>19 Correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it's addressed to you.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And it's on the letterhead of</p> <p>25 Mr. Bell's --</p>	<p style="text-align: right;">113</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 reference to molting is done to save costs</p> <p>3 refers to?</p> <p>4 A. I don't have the foggiest</p> <p>5 notion. I don't know anything about molting.</p> <p>6 I don't know anything about production, per</p> <p>7 se. So for me to -- this would be something</p> <p>8 that -- I mean, I don't know if it was</p> <p>9 responding or what he was referring to. You</p> <p>10 would just to have to ask him. I don't know.</p> <p>11 Q. Do you know anything about</p> <p>12 backfilling?</p> <p>13 A. Yes.</p> <p>14 Q. So you don't know anything</p> <p>15 about production, but you do know something</p> <p>16 about backfilling?</p> <p>17 A. Yes.</p> <p>18 Q. So you see in the last full</p> <p>19 paragraph where Mr. Bell says, "I think UEP</p> <p>20 would do its membership a much greater</p> <p>21 service by recommending an increase in the</p> <p>22 use of molting rather than its elimination"?</p> <p>23 A. I see that.</p> <p>24 Q. Do you recall Mr. Bell making</p> <p>25 that recommendation to you?</p>

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<p style="text-align: right;">114</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. No, I don't recall.</p> <p>3 Q. The next sentence says,</p> <p>4 "Another option would be for UEP to take a</p> <p>5 stronger stand on the question of space</p> <p>6 allowances."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that recommendation?</p> <p>10 A. No.</p> <p>11 Q. Do you recall Mr. Bell ever</p> <p>12 making a recommendation to you about space</p> <p>13 allowances?</p> <p>14 A. No.</p> <p>15 Q. And when Mr. Bell says, "This</p> <p>16 would really have pay-back potential for your</p> <p>17 members," how would you understand that?</p> <p>18 MS. LEVINE: Object to the form</p> <p>19 of the question.</p> <p>20 THE WITNESS: You would have to</p> <p>21 ask Don, I just don't know.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Okay. You can put that aside.</p> <p>24 Now, while you were the president of UEP,</p> <p>25 what were the requirements for membership?</p>	<p style="text-align: right;">116</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 so you get the right answer to your</p> <p>3 question?</p> <p>4 MR. OLSON: What date do you</p> <p>5 think I got wrong?</p> <p>6 MS. LEVINE: I think the</p> <p>7 restructure was not in the mid-'90s.</p> <p>8 MR. OLSON: When was it?</p> <p>9 MS. LEVINE: I think in 1999,</p> <p>10 2000. When was the --</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Do you recall when the</p> <p>13 restructuring approximately occurred?</p> <p>14 A. I don't exactly remember.</p> <p>15 Q. So some period in the mid to</p> <p>16 late '90s through 2006 is the period for my</p> <p>17 question. What did UEP do during that period</p> <p>18 to ensure that UEP members were and remained</p> <p>19 qualifying egg producers?</p> <p>20 A. Okay. First of all, the</p> <p>21 membership responsibilities were -- I mean, I</p> <p>22 basically delegated to several people.</p> <p>23 Q. Who is that?</p> <p>24 A. That would be Gene first and</p> <p>25 then later on Chad Gregory.</p>
<p style="text-align: right;">115</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. They had to own production.</p> <p>3 They had to own the physical facility and</p> <p>4 they had to own the birds, they had to --</p> <p>5 basically.</p> <p>6 Q. Anything else?</p> <p>7 A. They had to pay their dues.</p> <p>8 No, they just had to be an egg producer.</p> <p>9 Anybody that would qualify had to be an egg</p> <p>10 producer, period.</p> <p>11 Q. Did the requirements for</p> <p>12 membership change over time, for example,</p> <p>13 before --</p> <p>14 A. No. No, it didn't.</p> <p>15 Q. Now, let's talk about the</p> <p>16 period after the UEP restructuring. So when</p> <p>17 it's a direct membership organization.</p> <p>18 A. Okay.</p> <p>19 Q. Understood?</p> <p>20 A. Yes.</p> <p>21 Q. So we're talking mid-'90s</p> <p>22 through 2006. Right?</p> <p>23 A. '7, yeah. '6, yeah.</p> <p>24 MS. LEVINE: I think you got the</p> <p>25 dates wrong. Just wanted to repeat it</p>	<p style="text-align: right;">117</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. So do you know the answer to my</p> <p>3 question or would those be the people to ask?</p> <p>4 A. Those would be the people to</p> <p>5 ask.</p> <p>6 Q. I'll just ask you, then, do you</p> <p>7 know whether UEP conducted annual screenings</p> <p>8 of its members?</p> <p>9 A. Yes.</p> <p>10 Q. Did it or did it not?</p> <p>11 A. We did.</p> <p>12 Q. And how did those annual</p> <p>13 screenings take place?</p> <p>14 A. A couple of forms. Later on we</p> <p>15 had those that certified -- that were</p> <p>16 certified farms. We, you know, had access</p> <p>17 to -- I mean, they reported what their farm</p> <p>18 layers were and whose they were. That was</p> <p>19 one. And then the other one was that we</p> <p>20 annually had to bill dues. And in order to</p> <p>21 do that, it had to be -- it's based on how</p> <p>22 many chickens they had. So Linda Reichert</p> <p>23 would be the one to ask about that. She was</p> <p>24 very meticulous in reporting our members and</p> <p>25 who they were and what their qualifications</p>

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<p style="text-align: right;">118</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 were really.</p> <p>3 Q. But she would be the one to ask</p> <p>4 for the procedures, how that was done?</p> <p>5 A. Yeah. Uh-huh. Yeah.</p> <p>6 Q. Did UEP put any limitations on</p> <p>7 vertical integration of its members?</p> <p>8 A. No.</p> <p>9 Q. Did UEP put any limitations on</p> <p>10 the use of contract production by its</p> <p>11 members?</p> <p>12 A. No.</p> <p>13 Q. Now --</p> <p>14 A. Our industry did not use many</p> <p>15 contract producers unlike the broader</p> <p>16 industry. We had, I would say, a few.</p> <p>17 Q. You referred to the</p> <p>18 Capper-Volstead Act. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. What's your understanding of</p> <p>21 the Capper-Volstead Act based upon?</p> <p>22 A. Well, the Supreme Court didn't</p> <p>23 know and I don't know. They said they have</p> <p>24 to be a farmer, but they never said what a</p> <p>25 farmer was.</p>	<p style="text-align: right;">120</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MOARK0038396, was marked for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Let me hand you what we've</p> <p>7 marked as Pope-5. Apologize for tossing it</p> <p>8 there. This is one of the lengthier</p> <p>9 documents. If you could just familiarize</p> <p>10 yourself with it as efficiently as possible,</p> <p>11 then we'll look at a couple points. And,</p> <p>12 again, if you ever need to read --</p> <p>13 A. Okay.</p> <p>14 Q. -- things at length, you can.</p> <p>15 But for the record, the document is Bates</p> <p>16 stamped MOARK0038387 through 38396.</p> <p>17 A. (Reviewing document.)</p> <p>18 Q. Mr. Pope, are you generally</p> <p>19 through the document?</p> <p>20 A. Yes.</p> <p>21 Q. If you look at the front, it's</p> <p>22 on the Brandon Isaacson letterhead and a</p> <p>23 heading that says, "UEP Marketing Committee</p> <p>24 Antitrust Issues November 16, 2004."</p> <p>25 Do you see that?</p>
<p style="text-align: right;">119</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And do you have that</p> <p>3 understanding based on reading something the</p> <p>4 Supreme Court had said or based on reading</p> <p>5 something else?</p> <p>6 A. It was based on action that</p> <p>7 they took 20 years ago, I guess, 15 or 20</p> <p>8 years ago, I don't recall. But it was just</p> <p>9 in the -- it was in the public press, so</p> <p>10 that's as much as I know about it.</p> <p>11 Q. Did you ever seek advice from</p> <p>12 lawyers about the Capper-Volstead Act that</p> <p>13 related to UEP?</p> <p>14 A. Yes.</p> <p>15 Q. Who did you seek advice from?</p> <p>16 A. Basically Irving Isaacson. And</p> <p>17 when he retired from us, Kevin, you know.</p> <p>18 But basically the firm, their firm.</p> <p>19 Q. That's the Brandon Isaacson</p> <p>20 firm?</p> <p>21 A. Yes. Uh-huh.</p> <p>22 - - -</p> <p>23 (Exhibit Pope-5, UEP Marketing</p> <p>24 Committee Antitrust Issues</p> <p>25 November 16, 2004, Bates MOARK0038387-</p>	<p style="text-align: right;">121</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Are you familiar with this</p> <p>4 document?</p> <p>5 A. I don't recall reading it, no.</p> <p>6 Q. Do you know why this document</p> <p>7 was prepared?</p> <p>8 A. It was probably a request from</p> <p>9 the Marketing Committee, I would assume, but</p> <p>10 I don't know that for sure.</p> <p>11 Q. From time to time you attended</p> <p>12 marketing committee meetings. Correct?</p> <p>13 A. Not very often.</p> <p>14 Q. But occasionally?</p> <p>15 A. Very occasionally.</p> <p>16 Q. Do you know --</p> <p>17 A. The reason for that is we</p> <p>18 assign -- as small as we were staff wise, we</p> <p>19 assigned specific responsibilities. Gene has</p> <p>20 had specific responsibility for the</p> <p>21 marketing -- any marketing activities. Chad</p> <p>22 had membership. Of course that was a little</p> <p>23 bit later on, Chad wasn't there yet, and mine</p> <p>24 by and large was government relations and</p> <p>25 coming up with ideas to work on.</p>

31 (Pages 118 to 121)



<p style="text-align: right;">122</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. Fair enough. So you're</p> <p>3 not certain whether you've seen this cover</p> <p>4 memo before. Correct?</p> <p>5 A. I don't know.</p> <p>6 Q. You just don't know?</p> <p>7 A. Yeah.</p> <p>8 Q. So you'll see it refers to a</p> <p>9 memo from Irving Isaacson --</p> <p>10 A. Yes.</p> <p>11 Q. -- dated February 5, 1992?</p> <p>12 A. Yes. Uh-huh.</p> <p>13 Q. And that's attached. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And that memo has a cover</p> <p>16 letter that was sent to you on February 5,</p> <p>17 1992?</p> <p>18 A. Yeah.</p> <p>19 Q. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, Mr. Isaacson in the cover</p> <p>22 letter says, "Dear Al: I have advised the</p> <p>23 Capper Volstead memorandum in accordance with</p> <p>24 our discussion...", and then it goes on.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">124</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let me just ask you, then, a</p> <p>3 couple of questions. If you look at page 3,</p> <p>4 there's a heading that says, "What are the</p> <p>5 Legal Requirements for Membership in an</p> <p>6 Agricultural Cooperative."</p> <p>7 Do you see that?</p> <p>8 A. Yes. Yes.</p> <p>9 Q. Under that is a subheading that</p> <p>10 says, "Who is a 'farmer?'"</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Mr. Isaacson writes, "Under the</p> <p>14 Capper-Volstead Act, only farmers are</p> <p>15 entitled to organize a cooperative which has</p> <p>16 a degree of exemption from the antitrust</p> <p>17 act."</p> <p>18 A. Yeah.</p> <p>19 Q. "The real problem comes in</p> <p>20 determining as to who or what activities make</p> <p>21 a producer a 'farmer,' rather than say an</p> <p>22 agribusinessman."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Based on your experience in the</p>
<p style="text-align: right;">123</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Why did you -- strike that.</p> <p>4 Do you recall why you asked Mr.</p> <p>5 Isaacson to provide a Capper-Volstead --</p> <p>6 A. No, it was prudent that we did</p> <p>7 it from time to time to refresh ourselves.</p> <p>8 You'll see that John Harris is on this list.</p> <p>9 He's with USDA. He was their internal legal</p> <p>10 counsel, and Irving sent him a copy because I</p> <p>11 think he had met him and so he expressed an</p> <p>12 interest, of course, in a cooperative in UEP.</p> <p>13 So he sent him a copy and it was a copy</p> <p>14 apparently that we had talked about.</p> <p>15 Q. But just specifically for the</p> <p>16 record, do you recall why you requested Mr.</p> <p>17 Isaacson in approximately early 1992 to</p> <p>18 prepare a memo on Capper-Volstead</p> <p>19 qualifications?</p> <p>20 A. I don't remember specifically.</p> <p>21 It just had to come up in a conversation</p> <p>22 somewhere.</p> <p>23 Q. But you don't recall that</p> <p>24 conversation. Correct?</p> <p>25 A. No.</p>	<p style="text-align: right;">125</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 industry, what is the difference between a</p> <p>3 farmer and an agribusinessman?</p> <p>4 MS. LEVINE: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: Ask me again.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Based on your experience as</p> <p>9 president of UEP, what is the difference</p> <p>10 between a farmer and an agribusinessman?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question.</p> <p>13 THE WITNESS: Yeah. Well, there</p> <p>14 are a lot of people connected with</p> <p>15 agricultural, but either you're a</p> <p>16 farmer or you're not a farmer. I</p> <p>17 mean, I don't know how much simpler it</p> <p>18 can get. It's not really confusing to</p> <p>19 me. I mean, if they own a chicken</p> <p>20 house and they're producing eggs,</p> <p>21 they're a farmer.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. At the bottom do you see where</p> <p>24 Mr. Isaacson writes, "The decision is a</p> <p>25 rather restricted one, and the court..."</p>

32 (Pages 122 to 125)

<p style="text-align: right;">126</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 referring to the Supreme Court, "...left open</p> <p>3 the key question as to whether an integrated</p> <p>4 producer may be a farmer under any</p> <p>5 circumstances."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What's your understanding of</p> <p>9 that question that Mr. Isaacson identified?</p> <p>10 MS. LEVINE: Objection to form</p> <p>11 of the question.</p> <p>12 THE WITNESS: The answer was --</p> <p>13 has never been answered by the Supreme</p> <p>14 Court, so, you know, we're going to</p> <p>15 have to ask the Supreme Court sometime</p> <p>16 or somebody.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. What was the question as you</p> <p>19 understand it?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 THE WITNESS: I don't know what</p> <p>23 it is. The question is, does he</p> <p>24 qualify as a farmer?</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">128</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 but we did from time to time, if it</p> <p>3 was in their file, when we had a board</p> <p>4 meeting and there was a question</p> <p>5 about -- you know, if it was on our</p> <p>6 agenda, we would have copies of this</p> <p>7 Irving's letter. And if Moark was</p> <p>8 attending the board meeting, and he</p> <p>9 wanted a copy, we didn't just send</p> <p>10 them out, we would say if you're a</p> <p>11 member and you want a copy, there's</p> <p>12 copies over there on that table.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Did UEP receive other</p> <p>15 memoranda, to your knowledge, other than the</p> <p>16 ones in this Exhibit 5 regarding legal issues</p> <p>17 related to UEP's compliance with the</p> <p>18 Capper-Volstead Act?</p> <p>19 MS. LEVINE: Objection to the</p> <p>20 form of the question.</p> <p>21 THE WITNESS: One that I'm aware</p> <p>22 of.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. What do you have in mind?</p> <p>25 MS. LEVINE: I'm going to object</p>
<p style="text-align: right;">127</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Does what qualify as a farmer?</p> <p>3 A. Our member.</p> <p>4 Q. What member?</p> <p>5 A. A member of UEP. Do they</p> <p>6 qualify as a farmer? Yes, they do or no,</p> <p>7 they don't.</p> <p>8 Q. Your understanding is that Mr.</p> <p>9 Isaacson advised you it was an open question?</p> <p>10 A. It's what?</p> <p>11 Q. It was an open question?</p> <p>12 A. Yes, that the courts hadn't</p> <p>13 answered.</p> <p>14 Q. Now, this document was produced</p> <p>15 from the files of a company call Moark.</p> <p>16 A. Okay.</p> <p>17 Q. I preface -- I say that in</p> <p>18 preface to the question of do you know how</p> <p>19 these materials, if at all, were circulated</p> <p>20 to UEP's members?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 THE WITNESS: If it was this</p> <p>24 specific one, which I don't know the</p> <p>25 distribution of, I'm not sure of that,</p>	<p style="text-align: right;">129</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 on the basis of attorney-client</p> <p>3 privilege. And I am assuming that you</p> <p>4 are not going to invade the</p> <p>5 attorney-client privilege. So I'm</p> <p>6 going to instruct the witness --</p> <p>7 MR. OLSON: We can start with</p> <p>8 preliminary.</p> <p>9 MS. LEVINE: -- not to answer</p> <p>10 anything about the advice request or</p> <p>11 the advice given.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Let's start with the date and</p> <p>14 the author of the one you have in mind that's</p> <p>15 not in Exhibit 5.</p> <p>16 A. Oh. I just don't know when it</p> <p>17 was. All I know it was.</p> <p>18 Q. And then what we'd like to do</p> <p>19 is, can you give us information about it</p> <p>20 without telling us what it said?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. But if we wanted to find it,</p> <p>25 how would we find it?</p>

33 (Pages 126 to 129)

<p style="text-align: right;">130</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: To the extent the</p> <p>3 witness knows.</p> <p>4 THE WITNESS: You know, I don't</p> <p>5 even know. It may be filed under</p> <p>6 Capper-Volstead. It may be filed</p> <p>7 under a particular farmer. I don't</p> <p>8 know.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. Approximately when was it</p> <p>11 generated?</p> <p>12 A. I'm going say maybe ten years</p> <p>13 ago. That's why I'm having a little trouble</p> <p>14 remembering.</p> <p>15 Q. So the early 2000s?</p> <p>16 A. It was before we fully</p> <p>17 implemented our certified program.</p> <p>18 Q. So did --</p> <p>19 A. I don't know when that was</p> <p>20 exactly.</p> <p>21 Q. Did UEP ask Brandon Isaacson</p> <p>22 for legal advice regarding the implementation</p> <p>23 of its certified program?</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question. Instruct the</p>	<p style="text-align: right;">132</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 You can't be asking somebody what he</p> <p>3 asks lawyers. That exposes the</p> <p>4 attorney-client privilege. That is</p> <p>5 privileged.</p> <p>6 MR. OLSON: On a log you would</p> <p>7 have to say it was legal advice</p> <p>8 relating to some question. I'm not</p> <p>9 asking -- I'm not asking what the</p> <p>10 advice was. I'm just asking whether</p> <p>11 this thing exists or not.</p> <p>12 MS. LEVINE: I think he answered</p> <p>13 that there is a document. But you</p> <p>14 cannot be asking --</p> <p>15 BY MR. OLSON:</p> <p>16 Q. Who are the authors of the</p> <p>17 document?</p> <p>18 A. The one we received questioning</p> <p>19 it or the response?</p> <p>20 Q. Okay. Are you referring to</p> <p>21 documents exchanged regarding a Sparboe</p> <p>22 situation?</p> <p>23 A. Maybe.</p> <p>24 Q. That's what you have in mind,</p> <p>25 there was a back and forth raised by Sparboe?</p>
<p style="text-align: right;">131</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 witness.</p> <p>3 MR. OLSON: It's a yes or no</p> <p>4 question.</p> <p>5 MS. LEVINE: I'm instructing the</p> <p>6 witness not to answer about that</p> <p>7 request for legal advice. It explains</p> <p>8 legal advice.</p> <p>9 MR. OLSON: The question is</p> <p>10 whether it happened or not. It's not</p> <p>11 what it says.</p> <p>12 MS. LEVINE: Repeat the</p> <p>13 question.</p> <p>14 MR. OLSON: You would have to</p> <p>15 put it on a log.</p> <p>16 MS. LEVINE: Repeat your</p> <p>17 question.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. The question is, did UEP ask</p> <p>20 Brandon Isaacson for legal advice regarding</p> <p>21 the implementation of its certified program?</p> <p>22 MS. LEVINE: Objection to the</p> <p>23 form of the question. Instructing the</p> <p>24 witness not to answer. That clearly</p> <p>25 invades the attorney-client privilege.</p>	<p style="text-align: right;">133</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Well, we'll get to those later</p> <p>4 and your counsel is not asserting privileges</p> <p>5 over those.</p> <p>6 A. Yeah.</p> <p>7 Q. So other than those Sparboe</p> <p>8 materials, and the materials in Exhibit 5,</p> <p>9 are there any other memoranda that reflect</p> <p>10 legal advice that UEP got about compliance</p> <p>11 with the Capper-Volstead Act, to your</p> <p>12 knowledge?</p> <p>13 A. I don't recall any, but, you</p> <p>14 know, it was an obligation of the staff to</p> <p>15 periodically get a clarification for our</p> <p>16 board.</p> <p>17 Q. What do you mean by that,</p> <p>18 "periodically get a clarification for our</p> <p>19 board"?</p> <p>20 A. Well, if a board member would</p> <p>21 call me up or call somebody up in the office</p> <p>22 and they'd say, you know, I don't really</p> <p>23 remember, I'm not part of any other co-op but</p> <p>24 yours, what are the rules and what are the</p> <p>25 regulations. So at the next board meeting we</p>

34 (Pages 130 to 133)

<p style="text-align: right;">134</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 pop that on the agenda and I would have</p> <p>3 called up Irving, and said, Irving, I need a</p> <p>4 memo on -- and then if anything is changed or</p> <p>5 anything is different, but they never were,</p> <p>6 it was always the same one. It was all based</p> <p>7 on MBMA, so...</p> <p>8 Q. I'm just trying to get clarity</p> <p>9 and this is one of those lawyer things. But</p> <p>10 we had here a 1992 memo. We have this cover</p> <p>11 memo from 2004 which attaches the 1992 memo,</p> <p>12 says nothing has changed. Is there any other</p> <p>13 memo other than the ones you just mentioned</p> <p>14 to your knowledge that were prepared, that</p> <p>15 reflect legal advice by UEP --</p> <p>16 A. I don't recall any.</p> <p>17 Q. And so to your knowledge, as</p> <p>18 president of UEP, UEP's members were never</p> <p>19 told anything by UEP about the</p> <p>20 Capper-Volstead Act that was different from</p> <p>21 what's in this document. Correct?</p> <p>22 MS. LEVINE: Object to the form</p> <p>23 of the question.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Answer verbally.</p>	<p style="text-align: right;">136</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 answer any question that would reveal</p> <p>3 any conversation or advice provided by</p> <p>4 counsel.</p> <p>5 MR. OLSON: You've done that</p> <p>6 before. Your objection is noted.</p> <p>7 Now, can we just let the witness</p> <p>8 answer the question?</p> <p>9 MS. LEVINE: Only --</p> <p>10 MR. OLSON: I'll ask it again.</p> <p>11 MS. LEVINE: Only if he can</p> <p>12 answer --</p> <p>13 MR. OLSON: It's a yes or no</p> <p>14 question.</p> <p>15 MS. LEVINE: It is not a</p> <p>16 question or no question, Mr. Olson.</p> <p>17 You know you're invading the</p> <p>18 attorney-client privilege.</p> <p>19 MR. OLSON: No, I don't.</p> <p>20 MS. LEVINE: And this witness</p> <p>21 can answer questions that does not so</p> <p>22 invade.</p> <p>23 MR. OLSON: That's completely --</p> <p>24 MS. LEVINE: You can ask</p> <p>25 questions about the documents that are</p>
<p style="text-align: right;">135</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: It's</p> <p>3 mischaracterizing the witness, and</p> <p>4 you're not going to invade the</p> <p>5 attorney-client privilege.</p> <p>6 So Mr. Pope, you may answer the</p> <p>7 question to the extent that it does</p> <p>8 not reveal requests of counsel or</p> <p>9 advice of counsel.</p> <p>10 THE WITNESS: Okay. Read me the</p> <p>11 question again, sorry.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. The question is, to your</p> <p>14 knowledge, as president of UEP, UEP never</p> <p>15 told its members information about UEP's</p> <p>16 compliance with the Capper-Volstead Act that</p> <p>17 differed than the information in this</p> <p>18 Exhibit 5. Correct?</p> <p>19 A. Okay.</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 MR. OLSON: We don't need a</p> <p>23 lengthy objection.</p> <p>24 MS. LEVINE: Same objection. I</p> <p>25 am instructing the witness not to</p>	<p style="text-align: right;">137</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 produced. I did not stop you, I put</p> <p>3 no objection on those documents, but</p> <p>4 to go further would be a violation of</p> <p>5 the attorney-client privilege.</p> <p>6 MR. OLSON: That's not only an</p> <p>7 unprofessional accusation, it's</p> <p>8 completely frivolous. I'm doing</p> <p>9 nothing --</p> <p>10 MS. LEVINE: I think it's</p> <p>11 unprofessional to try to trick a</p> <p>12 witness into revealing attorney-client</p> <p>13 privileged information. If you have a</p> <p>14 document and it's been produced, ask</p> <p>15 him. I haven't stopped you once.</p> <p>16 MR. OLSON: I'm doing nothing to</p> <p>17 invade the attorney-client privilege.</p> <p>18 Now, your objections are noted. I'm</p> <p>19 going to ask the question, it's a yes</p> <p>20 or no question, I'm entitled to the</p> <p>21 answer. Your objections are noted.</p> <p>22 MS. LEVINE: You cannot ask him</p> <p>23 content of anything the attorney</p> <p>24 asked.</p> <p>25 MR. OLSON: He already said he's</p>

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<p style="text-align: right;">138</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 not aware of anything else.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. I just want it to be clear that</p> <p>5 for the record, as your understanding as the</p> <p>6 president of UEP, UEP members were never told</p> <p>7 anything by UEP about compliance with the</p> <p>8 Capper-Volstead Act that was inconsistent</p> <p>9 with what's in this exhibit. Correct?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question. That clearly goes to</p> <p>12 content of what counsel may or may not</p> <p>13 have told this witness. Instruct the</p> <p>14 witness not to answer that question.</p> <p>15 MR. OLSON: You're going to</p> <p>16 instruct the witness not to answer</p> <p>17 this question?</p> <p>18 MS. LEVINE: Not to answer the</p> <p>19 question.</p> <p>20 MR. OLSON: Then we're going to</p> <p>21 have to bring the witness back after</p> <p>22 we get a ruling from the court. Is</p> <p>23 that what you want to do?</p> <p>24 MS. LEVINE: You could have gone</p> <p>25 to the court before, Mr. Olson, if you</p>	<p style="text-align: right;">140</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 to do so, you should have gone to</p> <p>3 court before this deposition.</p> <p>4 MR. OLSON: Well, I had no way</p> <p>5 of knowing that you would raise</p> <p>6 frivolous objections that would</p> <p>7 necessitate that.</p> <p>8 - - -</p> <p>9 (Exhibit Pope-6, 4/21/99 Letter,</p> <p>10 Bates UE0063296, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Mr. Pope, I've handed you what</p> <p>15 we've marked Pope Exhibit 6. Take a brief</p> <p>16 review and let me know when you're done,</p> <p>17 please.</p> <p>18 A. (Reviewing document.)</p> <p>19 Okay.</p> <p>20 Q. I should say this is a one-page</p> <p>21 document, Bates stamped UE0063296. It's</p> <p>22 dated April 21, 1999. Can you identify this</p> <p>23 document for us, Mr. Pope?</p> <p>24 A. It appears -- I don't recall</p> <p>25 the individual letter, but it appears it was</p>
<p style="text-align: right;">139</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 wanted to invade the attorney-client</p> <p>3 privilege --</p> <p>4 MR. OLSON: I had no way --</p> <p>5 MS. LEVINE: -- any further.</p> <p>6 Let me finish.</p> <p>7 MR. OLSON: -- of knowing that</p> <p>8 you were going to make a frivolous</p> <p>9 objection. I just want to know if</p> <p>10 you're going to stand on it or not?</p> <p>11 MS. LEVINE: I am going to stand</p> <p>12 on my objection.</p> <p>13 MR. OLSON: Well, then, we'll</p> <p>14 have to bring the witness back.</p> <p>15 MS. LEVINE: You'll have to go</p> <p>16 to court first. In the 70 --</p> <p>17 MR. OLSON: Yes, we will.</p> <p>18 MS. LEVINE: Let me finish. You</p> <p>19 constantly interrupt me. You have</p> <p>20 brought a 76-year-old witness who has</p> <p>21 not been at UEP for seven years, we</p> <p>22 have produced certain documents, you</p> <p>23 may ask about them, but you cannot ask</p> <p>24 broad questions about attorney-client</p> <p>25 content or privilege. If you wanted</p>	<p style="text-align: right;">141</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 written by at that time Butch DeVries, who</p> <p>3 was chairman of the UEP Export Committee, and</p> <p>4 basically distributed out to our members. It</p> <p>5 would not be sent out in the form of a</p> <p>6 newsletter. This would be sent to producers</p> <p>7 to see whether or not they wanted to</p> <p>8 participate in export order.</p> <p>9 Q. Now, at this time, late 1999,</p> <p>10 UEP had its own Export Committee that would</p> <p>11 work with USEM. Is that right?</p> <p>12 A. Well, they didn't -- we didn't</p> <p>13 -- we didn't work with USEM. It was a</p> <p>14 separate organization. And UEP's board</p> <p>15 directed UEP as part of -- what they wanted</p> <p>16 was they wanted the ability from time to time</p> <p>17 to consider an export as an alternative to</p> <p>18 other markets, basically when they were in</p> <p>19 surplus. Well, you have to be in there all</p> <p>20 the time. Well, so, USEM basically filled</p> <p>21 that void because they were active on keeping</p> <p>22 in touch or being aware of export</p> <p>23 opportunities. UEP had on occasion when</p> <p>24 called upon by USEM to say USEM has an order</p> <p>25 for 25 loads of eggs, can you fill -- is UEP</p>

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<p style="text-align: right;">142</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 interested in filling 5 or 10 of those loads</p> <p>3 or something like that. And at that we would</p> <p>4 call up our Export Committee, they would look</p> <p>5 at the values and then they would determine</p> <p>6 whether it was -- whether they thought</p> <p>7 producers would be interested in that, at</p> <p>8 which point we would solicit maybe to see if</p> <p>9 there was any interest in doing it. Again,</p> <p>10 unlike USEM, simply by sending in and saying,</p> <p>11 yeah, I'll fill a load or fill two, still</p> <p>12 doesn't hold them to it in our organization.</p> <p>13 We would hope they would fill the order once</p> <p>14 they said they wanted to, but it's still</p> <p>15 voluntary. They can or they don't.</p> <p>16 Q. Now, this letter went out on</p> <p>17 the UEP letterhead. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. While you were president.</p> <p>20 Correct?</p> <p>21 A. Yes.</p> <p>22 Q. In that first full paragraph it</p> <p>23 says, "In the past export deliveries the</p> <p>24 industry has recognized a substantial</p> <p>25 increase in the domestic market for nest run</p>	<p style="text-align: right;">144</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 could or could not participate in.</p> <p>3 Whatever they wanted to do.</p> <p>4 Now, normally the most favorable</p> <p>5 time to export is when you have</p> <p>6 surplus eggs. That's the bottom line.</p> <p>7 So normally that's the only time we'd</p> <p>8 be interested in exporting eggs until,</p> <p>9 as I understand it, recently. So you</p> <p>10 have a situation where like a company,</p> <p>11 if they had product that is going to</p> <p>12 be damaged in storage or anything like</p> <p>13 that, we really don't have any way to</p> <p>14 store eggs any length of time, so we</p> <p>15 have to in surplus times try to remove</p> <p>16 them. So the key here is and -- which</p> <p>17 I think Butch in this letter didn't</p> <p>18 phrase it quite right because it would</p> <p>19 indicate in this letter that we take</p> <p>20 the -- that the producers would bear</p> <p>21 the burden of a loss normally, which</p> <p>22 they would also burden in a domestic</p> <p>23 market. But here there is a big</p> <p>24 differential. You have an export</p> <p>25 market that may or may not be in some</p>
<p style="text-align: right;">143</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 and carton eggs."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is that consistent with your</p> <p>6 knowledge?</p> <p>7 A. Yes.</p> <p>8 Q. Then it continues, "While most</p> <p>9 of these export orders have been taken at a</p> <p>10 loss, the long-term benefit to the industry</p> <p>11 has been many times greater than the loss."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. What does that mean, most of</p> <p>15 the export orders are taken at a loss?</p> <p>16 MS. LEVINE: Objection.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. What's the loss?</p> <p>19 MS. LEVINE: Objection to form</p> <p>20 of the question.</p> <p>21 THE WITNESS: I don't need to</p> <p>22 give you or anybody else a lesson in</p> <p>23 supply and demand. But the producers</p> <p>24 asked us if we could establish an</p> <p>25 export program for producers that they</p>	<p style="text-align: right;">145</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 relationship to the domestic price.</p> <p>3 The export order could -- it could be</p> <p>4 favorable, it could be unfavorable,</p> <p>5 but they're never the same. But you</p> <p>6 have to be there standing ready. If</p> <p>7 you're going to be in an export</p> <p>8 business, you've got to be there</p> <p>9 standing ready, giving them a price</p> <p>10 where you ask for it. So producers</p> <p>11 normally had to take a loss in</p> <p>12 relationship to the domestic market</p> <p>13 maybe. There again, I add maybe</p> <p>14 because I don't know. But that was</p> <p>15 their decision, that was their burden,</p> <p>16 whether they wanted to do that or not.</p> <p>17 It was not -- there was no orders here</p> <p>18 that have ever in any way, shape or</p> <p>19 form been subsidized where UEP has</p> <p>20 taken the loss. We've never done</p> <p>21 that.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. So when it says -- back to my</p> <p>24 question, when it says the exported orders</p> <p>25 have been taken at a loss, your testimony is</p>

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<p style="text-align: right;">146</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that that's a loss compared to the domestic</p> <p>3 price?</p> <p>4 A. No, the loss is whatever it is,</p> <p>5 whether it's domestic or -- I would say</p> <p>6 normally that's true, that it would be</p> <p>7 domestic, but, again, that's a decision that</p> <p>8 you as a producer had to make.</p> <p>9 Q. I just -- if you could just</p> <p>10 focus on my questions and help us understand.</p> <p>11 A. Okay.</p> <p>12 Q. Some of this terminology you</p> <p>13 may understand very well, but others might</p> <p>14 not. You realize your deposition today is</p> <p>15 being videotaped. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it could be played in front</p> <p>18 of the jury in this case?</p> <p>19 A. Yes.</p> <p>20 Q. So how would you explain to the</p> <p>21 jury just what it means where it says the</p> <p>22 export orders have been taken at a loss, what</p> <p>23 does that mean?</p> <p>24 MS. LEVINE: Objection to form</p> <p>25 of the question.</p>	<p style="text-align: right;">148</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 commodity that is always priced in</p> <p>3 relationship to how many we're</p> <p>4 producing and how many we're selling.</p> <p>5 Sometimes it's favorable and sometimes</p> <p>6 it's not favorable. So I would</p> <p>7 explain the loss that the producer</p> <p>8 decides to make on their own if they</p> <p>9 want to ship some eggs export, because</p> <p>10 even a loss is better than just --</p> <p>11 well, they never would just dump the</p> <p>12 eggs, but they would have to sell them</p> <p>13 at a loss on the domestic market, too.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. How would selling an export</p> <p>16 order at a loss provide a long-term benefit</p> <p>17 to the industry?</p> <p>18 A. Okay. It would generally</p> <p>19 enhance the domestic price.</p> <p>20 Q. Why?</p> <p>21 A. Why? Because there's less</p> <p>22 supply.</p> <p>23 Q. Now, this document, if you look</p> <p>24 down to the third full paragraph, refers to</p> <p>25 export commitment pledges. In fact, it says,</p>
<p style="text-align: right;">147</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: It would be a loss</p> <p>3 in relationship to the domestic</p> <p>4 values. And here, again, I remind</p> <p>5 everybody, that that's a burden --</p> <p>6 that's a decision just like marketing</p> <p>7 or just like production decision, that</p> <p>8 the member individually makes.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. No one held a gun to their</p> <p>11 head. Right?</p> <p>12 A. No. Right.</p> <p>13 Q. Now, it continues, "...the</p> <p>14 long-term benefit to the industry has been</p> <p>15 many times greater than the loss."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. How would you explain that to</p> <p>19 the jury?</p> <p>20 MS. LEVINE: Objection to form</p> <p>21 of the question.</p> <p>22 THE WITNESS: Hey, jury. When</p> <p>23 we have a surplus of eggs, they're all</p> <p>24 sold at a loss, domestic and U.S.</p> <p>25 It's just the way it is. And we are a</p>	<p style="text-align: right;">149</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 "...UEP's Export Committee has been directed</p> <p>3 by UEP's Board to secure export commitment</p> <p>4 pledges from the industry."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Is that consistent with your</p> <p>8 knowledge?</p> <p>9 A. Is that what?</p> <p>10 Q. Consistent with your knowledge,</p> <p>11 that the board directed the UEP --</p> <p>12 A. Yes.</p> <p>13 Q. -- committee to do that?</p> <p>14 What is an export commitment</p> <p>15 pledge?</p> <p>16 A. Well, before it got that far,</p> <p>17 our attorney said we don't want you to --</p> <p>18 MS. LEVINE: Objection to the</p> <p>19 form of the question. Mr. Pope, as</p> <p>20 all lawyers know --</p> <p>21 BY MR. OLSON:</p> <p>22 Q. The question --</p> <p>23 MS. LEVINE: -- information</p> <p>24 communicated with your attorney is</p> <p>25 privileged and no one is asking you to</p>

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<p style="text-align: right;">150</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 divulge that information. So if you</p> <p>3 can't answer a question without</p> <p>4 divulging, just tell Mr. Olson. If</p> <p>5 you can answer --</p> <p>6 THE WITNESS: Yes.</p> <p>7 MS. LEVINE: -- without</p> <p>8 divulging, you may answer the</p> <p>9 question.</p> <p>10 THE WITNESS: The commitment we</p> <p>11 got back --</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Let's take it step by step.</p> <p>14 Just what is an export commitment pledge?</p> <p>15 A. It was litmus paper, for the</p> <p>16 lack of a better word, to find out if there</p> <p>17 was really interest in producers</p> <p>18 participating in export order.</p> <p>19 Q. It asks producers to commit to</p> <p>20 participating in an export order?</p> <p>21 A. It's still a voluntarily</p> <p>22 commitment.</p> <p>23 Q. Just -- if you could just stick</p> <p>24 with my questions.</p> <p>25 A. Yes. Okay.</p>	<p style="text-align: right;">152</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: Yeah, we received</p> <p>3 those.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Now, was the UEP Export</p> <p>6 Committee operating the entire time you were</p> <p>7 president or did that change at some point?</p> <p>8 Was there a time when USEM took over</p> <p>9 management of the export program?</p> <p>10 MS. LEVINE: Object to the form</p> <p>11 of the question.</p> <p>12 THE WITNESS: In some producer's</p> <p>13 mind UEP may not have been as activist</p> <p>14 about getting export orders. So due</p> <p>15 to that, there were some producers</p> <p>16 that felt that they needed an</p> <p>17 organization that focused solely on</p> <p>18 that. We had government relations</p> <p>19 issues, animal welfare, anything else.</p> <p>20 We just -- we didn't have the staff to</p> <p>21 focus on exports. We didn't.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. So at some point USEM took over</p> <p>24 management of the export program. Correct?</p> <p>25 MS. LEVINE: Object to the form</p>
<p style="text-align: right;">151</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. You made your point about</p> <p>3 things being voluntarily. I understand</p> <p>4 your testimony.</p> <p>5 A. I haven't made it as many times</p> <p>6 as you've told me it was a supply management</p> <p>7 program.</p> <p>8 Q. My specific question is, the</p> <p>9 commitment pledge sent out to UEP members</p> <p>10 asked UEP members to make a commitment to</p> <p>11 engage in exports. Correct?</p> <p>12 A. Yes.</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. And that was sent to UEP</p> <p>17 members. Correct?</p> <p>18 A. Yes.</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. And UEP members received</p> <p>23 commitments in response. Correct?</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">153</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3 THE WITNESS: Well, again, they</p> <p>4 had their own export program and we</p> <p>5 had ours.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Did UEP's export program</p> <p>8 continue during the entire time you were</p> <p>9 president or at some point did USEM take over</p> <p>10 management of that program?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question.</p> <p>13 THE WITNESS: No, they never</p> <p>14 took over our program.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. So was there always a UEP</p> <p>17 Export Committee while you were president?</p> <p>18 A. The terminology changed.</p> <p>19 Q. To what?</p> <p>20 A. To a Marketing Committee</p> <p>21 meeting.</p> <p>22 Q. So the Marketing Committee took</p> <p>23 over the export role?</p> <p>24 A. They act -- yes.</p> <p>25 Q. So the UEP Marketing Committee</p>

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<p style="text-align: right;">154</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 took over the UEP export role. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. Now, is there a point when UEP</p> <p>5 took over the management of USEM?</p> <p>6 A. Yes.</p> <p>7 Q. When did that occur?</p> <p>8 A. I have no idea, I don't</p> <p>9 remember.</p> <p>10 - - -</p> <p>11 (Exhibit Pope-7, UEP Board of</p> <p>12 Directors May 12-13, 1999 -</p> <p>13 Washington, D.C. Minutes, Bates</p> <p>14 UE0297726 - UE0297730, was marked for</p> <p>15 identification.)</p> <p>16 - - -</p> <p>17 BY MR. OLSON:</p> <p>18 Q. All right. Let me hand you</p> <p>19 what we've marked Pope-7. This is Bates</p> <p>20 stamped UE0297726 through 297730. It's</p> <p>21 titled, "United Egg Producers Board of</p> <p>22 Directors May 12-13, 1999 - Washington, D.C."</p> <p>23 A. Okay.</p> <p>24 Q. Can you identify this, sir, as</p> <p>25 the minutes from that meeting?</p>	<p style="text-align: right;">156</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the members in the affiliated --</p> <p>3 A. Yes.</p> <p>4 Q. -- groups. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Now, I see Mr. Isaacson's name.</p> <p>7 Would he generally attend these meetings?</p> <p>8 A. Yes.</p> <p>9 Q. Would Mr. Isaacson, as a matter</p> <p>10 of standard procedure, make any comments at</p> <p>11 these meetings?</p> <p>12 A. Occasionally.</p> <p>13 Q. But was there any standard time</p> <p>14 when Mr. Isaacson would make remarks?</p> <p>15 A. Near the end of our board</p> <p>16 meeting we usually had --</p> <p>17 MS. LEVINE: Mr. Pope, I'm just</p> <p>18 going to caution you one more time,</p> <p>19 you may not divulge the content of</p> <p>20 request for legal advice or what Mr.</p> <p>21 Isaacson said.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MS. LEVINE: Mr. Olson can</p> <p>24 repeat his question without --</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">155</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. They are.</p> <p>3 Q. And you attended that meeting.</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you would generally attend</p> <p>7 board of directors meetings. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And there was, as we said</p> <p>10 earlier, no limitation on who could attend</p> <p>11 those meetings. Correct?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. Is that right?</p> <p>16 A. No. The meetings were open.</p> <p>17 Q. Were they open to egg</p> <p>18 purchasers, in other words, customers of UEP</p> <p>19 members, do you know?</p> <p>20 A. You know, it's a pretty</p> <p>21 broad -- what you're talking about is pretty</p> <p>22 broad, so...</p> <p>23 Q. Strike that. We'll move on.</p> <p>24 A. Okay.</p> <p>25 Q. They were at least open to all</p>	<p style="text-align: right;">157</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. It's a yes or no question.</p> <p>3 Were there standards times when</p> <p>4 Mr. Isaacson --</p> <p>5 A. Yeah, near the end of our board</p> <p>6 meeting he would make a few comments. He was</p> <p>7 also our sheriff.</p> <p>8 Q. What did those comments concern?</p> <p>9 MS. LEVINE: You may only --</p> <p>10 THE WITNESS: I don't know. I</p> <p>11 can't remember what they were.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Did they differ or were they</p> <p>14 always the same?</p> <p>15 A. Well, they differed. I mean --</p> <p>16 but it was --</p> <p>17 MS. LEVINE: Again, I caution</p> <p>18 you not to reveal privileged</p> <p>19 information.</p> <p>20 MR. OLSON: You're going to</p> <p>21 assert privilege over what he said at</p> <p>22 those meetings that were open to</p> <p>23 everyone?</p> <p>24 MS. LEVINE: If it is legal</p> <p>25 advice or request for legal advice.</p>

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<p style="text-align: right;">158</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Was it confidential,</p> <p>3 Counsel? We've already been through</p> <p>4 this issue with the court. Are you</p> <p>5 asserting legal advice over what Mr.</p> <p>6 Isaacson said at these meetings?</p> <p>7 MS. LEVINE: It depends on which</p> <p>8 meeting. It depends on what he said.</p> <p>9 It depends if there was an executive</p> <p>10 session. You haven't done any of the</p> <p>11 foundation for what he's talking</p> <p>12 about.</p> <p>13 MR. OLSON: I established</p> <p>14 foundation for all this. We're</p> <p>15 talking about comments that he would</p> <p>16 make at the board of directors</p> <p>17 meeting --</p> <p>18 MS. LEVINE: If he can</p> <p>19 remember --</p> <p>20 MR. OLSON: -- as a standard</p> <p>21 matter. Are you asserting privilege</p> <p>22 over that?</p> <p>23 MS. LEVINE: If this witness can</p> <p>24 remember what Mr. Isaacson said --</p> <p>25 MR. OLSON: The witness doesn't</p>	<p style="text-align: right;">160</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 with the current economic conditions and</p> <p>3 suggested that UEP may need to develop a</p> <p>4 supply program for board review within the</p> <p>5 next 30 days."</p> <p>6 Do you see that?</p> <p>7 A. I see it.</p> <p>8 Q. What's a supply program?</p> <p>9 A. Nothing more than I've already</p> <p>10 described, suggesting molt, suggesting</p> <p>11 cutting back on the hatch. Same old stuff.</p> <p>12 Q. And asking for commitments from</p> <p>13 UEP members. Correct?</p> <p>14 A. No.</p> <p>15 Q. UEP members were never asked to</p> <p>16 commitment to a supply program?</p> <p>17 A. When you say the word "never,"</p> <p>18 that's pretty broad. I would say that there</p> <p>19 might have, but not to my knowledge, there</p> <p>20 might have been times when we asked them if</p> <p>21 they were willing to consider it.</p> <p>22 Q. If you look at a few pages in,</p> <p>23 four, there's a heading that says, "ANIMAL</p> <p>24 WELFARE COMMITTEE REPORT." If you could</p> <p>25 review that and tell me when you're done.</p>
<p style="text-align: right;">159</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 need coaching. The question is</p> <p>3 whether you're asserting legal advice?</p> <p>4 MS. LEVINE: You can't have a</p> <p>5 foundation. Often there was executive</p> <p>6 session. This is 76-year-old witness,</p> <p>7 you're asking about something in 1999.</p> <p>8 I'm not going to have you trick him on</p> <p>9 divulging advice.</p> <p>10 MR. OLSON: No one is tricking</p> <p>11 anybody.</p> <p>12 MS. LEVINE: You can set the</p> <p>13 foundation.</p> <p>14 MR. OLSON: I think the record</p> <p>15 will reflect what's happening.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Let's look at the first page of</p> <p>18 this, because I think it says, "CHAIRMAN'S</p> <p>19 COMMENTS."</p> <p>20 Do you see that?</p> <p>21 A. Uh-huh.</p> <p>22 Q. It's referring to comments by</p> <p>23 Ken Looper.</p> <p>24 A. Uh-huh.</p> <p>25 Q. It says, "He expressed concern</p>	<p style="text-align: right;">161</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. (Reviewing document.)</p> <p>3 Yes.</p> <p>4 Q. This refers to the Scientific</p> <p>5 Advisory Committee. And it says,</p> <p>6 "Additionally the committee would review the</p> <p>7 needs of a video of the guidelines and</p> <p>8 possible changes that could be made to</p> <p>9 cages."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall the discussion</p> <p>13 that's memorialized there?</p> <p>14 A. I remember we had a discussion.</p> <p>15 I don't remember the details of it.</p> <p>16 Q. When it says, "possible changes</p> <p>17 that could be made to cages," do you know</p> <p>18 what that's referring to?</p> <p>19 A. Sure.</p> <p>20 Q. What changes were being</p> <p>21 considered to cages?</p> <p>22 A. As UEP's staff and board</p> <p>23 considered our guidelines, we knew that we</p> <p>24 had to live or die with the recommendations</p> <p>25 that were being made by our Scientific</p>

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<p style="text-align: right;">162</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Advisory Committee. And we also realized</p> <p>3 that they're not all locked in concrete</p> <p>4 because there's new science that comes along</p> <p>5 which would be considered by the committee,</p> <p>6 and so the guidelines were expected to change</p> <p>7 from time to time and did as a result of the</p> <p>8 committee.</p> <p>9 I'd like to point out here for</p> <p>10 the benefit of everybody here, that there's</p> <p>11 really two parts to our guidelines. And I</p> <p>12 think this is a very important distinction.</p> <p>13 Our Scientific Advisory Committee established</p> <p>14 our guidelines based on the preponderance and</p> <p>15 the most recent research projects that were</p> <p>16 available. They had nothing to do with</p> <p>17 implementing the program. It was a</p> <p>18 completely different function. And that was</p> <p>19 a function of a combination of the Animal</p> <p>20 Welfare Committee said, okay, we got these</p> <p>21 guidelines, now how in the hell are we going</p> <p>22 to implement these guidelines which</p> <p>23 dramatically changes the way egg producers</p> <p>24 are going to do business, how do we do that</p> <p>25 with the least amount of disruption to our</p>	<p style="text-align: right;">164</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 "Gregory reported that the committee had met</p> <p>3 on April 27th and recommended to the</p> <p>4 membership a supply program that included a</p> <p>5 60 week molt and early slaughter"?</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And then at this meeting the</p> <p>9 board confirmed that recommendation.</p> <p>10 Correct?</p> <p>11 A. Okay, yes.</p> <p>12 Q. And that -- when it says "early</p> <p>13 slaughter," what does that mean?</p> <p>14 A. Well, all the producers have</p> <p>15 flocks that can be run out to a number of</p> <p>16 weeks. They could run them -- you know, they</p> <p>17 can run -- they can run them as long as they</p> <p>18 want to, but what we were encouraging them</p> <p>19 was to consider not running the flock and</p> <p>20 taking it out a few weeks early.</p> <p>21 Q. By taking it out, that means</p> <p>22 killing it. Correct?</p> <p>23 A. Well --</p> <p>24 MS. LEVINE: Objection to the</p> <p>25 form of the question.</p>
<p style="text-align: right;">163</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 producers and to our customers.</p> <p>3 So the Producer Committee then</p> <p>4 took these guidelines and shared them with</p> <p>5 the board, shared them with FMI, shared them</p> <p>6 with the convenience stores, fast food</p> <p>7 places, shared them with USDA, shared them</p> <p>8 with the justice department. I can go on and</p> <p>9 on. Deputy Secretary of Agricultural asked</p> <p>10 us to come in and present our guidelines to</p> <p>11 25 or 30 people within the Department of</p> <p>12 Agricultural in Washington. I don't know who</p> <p>13 they all were, but I remember the deputy</p> <p>14 secretary saying that the way we had gone</p> <p>15 about developing our guidelines was a model</p> <p>16 example for all of animal agriculture to do</p> <p>17 the same.</p> <p>18 Q. That's great. We'll get to</p> <p>19 that.</p> <p>20 Let's try to do some</p> <p>21 preliminaries. If you look in the middle of</p> <p>22 the page under the Marketing Committee</p> <p>23 report. This is page 4.</p> <p>24 A. Okay.</p> <p>25 Q. Do you see where it says,</p>	<p style="text-align: right;">165</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. That's what the word</p> <p>4 "slaughter" means. Right?</p> <p>5 MS. LEVINE: Objection to the</p> <p>6 form of the question.</p> <p>7 THE WITNESS: Yeah. Yes.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. You can put that aside.</p> <p>10 Let me hand you Pope-8.</p> <p>11 - - -</p> <p>12 (Exhibit Pope-8, United Voices</p> <p>13 dated August 2, 1999, Bates UE0064456</p> <p>14 - UE0064459, was marked for</p> <p>15 identification.)</p> <p>16 - - -</p> <p>17 BY MR. OLSON:</p> <p>18 Q. This document is Bates stamp</p> <p>19 UE0064456 through 59. It's a United Voices</p> <p>20 dated August 2, 1999.</p> <p>21 Now, what was your role, if</p> <p>22 any, with regard to United Voices? Actually</p> <p>23 back -- let me back up.</p> <p>24 What was United Voices?</p> <p>25 A. It was just a -- it was just a</p>

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<p style="text-align: right;">166</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 publication that we did normally every other</p> <p>3 week, and it was sent out to the industry.</p> <p>4 Pretty public. USDA, universities got it,</p> <p>5 you know, a lot of people got it.</p> <p>6 Q. The members of all of UEP and</p> <p>7 all of the allied groups?</p> <p>8 A. Yes.</p> <p>9 Q. What was your role, if any,</p> <p>10 with regard to United Voices?</p> <p>11 A. Zero.</p> <p>12 Q. Occasionally you would write</p> <p>13 something for United Voices. Correct?</p> <p>14 A. I think in all of them that you</p> <p>15 look at, you might find one.</p> <p>16 Q. Do you recall what that one was</p> <p>17 about?</p> <p>18 A. Would you want to focus just on</p> <p>19 the one, do you?</p> <p>20 Q. I said do you recall what that</p> <p>21 one was about?</p> <p>22 A. Yes, I do.</p> <p>23 Q. What was it about?</p> <p>24 A. Backfilling.</p> <p>25 Q. Do you recall writing any other</p>	<p style="text-align: right;">168</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 page 2 and then it fills up page 3. If you</p> <p>3 could just review to the end of page 3 and</p> <p>4 let me know when you're done, please.</p> <p>5 A. (Reviewing document.)</p> <p>6 Okay, I think I have enough to</p> <p>7 answer the question.</p> <p>8 Q. This talks an increase in</p> <p>9 prices that's happening in the industry.</p> <p>10 Correct? Begins by talking about prices</p> <p>11 increasing. Correct?</p> <p>12 A. I think it compares to a year</p> <p>13 earlier, yeah.</p> <p>14 Q. And the prices are going up.</p> <p>15 Right?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question.</p> <p>18 THE WITNESS: Well --</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Just so we're on the same page,</p> <p>21 you see it says -- where it says, "Why the</p> <p>22 sudden increase in the price quote," in the</p> <p>23 left-hand column in the middle?</p> <p>24 A. Yes.</p> <p>25 Q. So this indicates that there's</p>
<p style="text-align: right;">167</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 pieces for --</p> <p>3 A. I don't. You know, I may have</p> <p>4 because I have written for United Voices.</p> <p>5 Especially we got two people, we got United</p> <p>6 Voices that got to out to at one time, 800</p> <p>7 people. So sometimes I wrote the whole</p> <p>8 thing, but that was just rarely. And that</p> <p>9 was before I hired Gene. And then Gene --</p> <p>10 when Gene came, he took much more interest in</p> <p>11 the day-to-day stuff because he was dealing</p> <p>12 day to day with the producers where I wasn't.</p> <p>13 So I gave him the responsibility of doing the</p> <p>14 newsletter.</p> <p>15 Q. So after Gene Gregory took over</p> <p>16 United Voices, the only piece that you recall</p> <p>17 contributing to United Voices was the piece</p> <p>18 you wrote on backfilling. Correct?</p> <p>19 A. That's the only one I recall.</p> <p>20 Q. So let's just look briefly at</p> <p>21 this issue then. If you look at the page 2</p> <p>22 at the bottom, there's the headline that</p> <p>23 says, "ROLLER COASTER EGG PRICE QUOTES:"</p> <p>24 A. Yes.</p> <p>25 Q. It's just a little bit on</p>	<p style="text-align: right;">169</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 a discussion of prices going up. Correct?</p> <p>3 A. Just from looking at the graph,</p> <p>4 but, again, I'm -- you know, I don't know.</p> <p>5 Q. You don't know if this is</p> <p>6 discussing an increase in prices?</p> <p>7 A. This is paper that would --</p> <p>8 where Gene would use to either reflect</p> <p>9 decisions that were made in the Marketing</p> <p>10 Committee or the board meeting or something</p> <p>11 like that.</p> <p>12 Q. I'm asking something more</p> <p>13 specific. Just to see we're on the same</p> <p>14 page, do you acknowledge this is talking</p> <p>15 about prices increasing?</p> <p>16 A. Yes.</p> <p>17 Q. Some ideas of why that's</p> <p>18 happened are offered. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. One of them is that early molt</p> <p>21 and early slaughter program that the UEP</p> <p>22 board approved. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. This refers to a meeting in</p> <p>25 Chicago in July of 1999. Do you see that</p>

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<p style="text-align: right;">170</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 reference to that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know if you attended</p> <p>5 that meeting?</p> <p>6 A. I did.</p> <p>7 Q. Do you recall that meeting?</p> <p>8 A. I recall some of that meeting</p> <p>9 in '99, so that was 10, 11, 12, 14 years ago.</p> <p>10 Q. Do you recall what was</p> <p>11 discussed at that meeting about a program to</p> <p>12 bring supply more closely in line with</p> <p>13 demand?</p> <p>14 A. You know, we discussed that at</p> <p>15 every meeting.</p> <p>16 Q. Do you recall discussing it at</p> <p>17 the Chicago meeting in July?</p> <p>18 A. Yes.</p> <p>19 Q. You do recall?</p> <p>20 A. Yes.</p> <p>21 Q. What do you recall about the</p> <p>22 discussion?</p> <p>23 A. I just recall that the reason</p> <p>24 that they were there in '99 was because they</p> <p>25 had low egg prices and they felt like there</p>	<p style="text-align: right;">172</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 participate in a program to" --</p> <p>3 A. Okay.</p> <p>4 Q. And it says, "Their answer was</p> <p>5 to survey the membership."</p> <p>6 A. Yes.</p> <p>7 Q. And it continues, "UEP intends</p> <p>8 to do just that."</p> <p>9 A. Uh-huh.</p> <p>10 Q. Do you recall that happening?</p> <p>11 A. We must have, but I don't</p> <p>12 recall it. That's all.</p> <p>13 Q. Do you see where it says, "You</p> <p>14 will also be asked if you would participate</p> <p>15 in a supply adjustment program"?</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall UEP asking its</p> <p>19 members if they would participate in a supply</p> <p>20 adjustment --</p> <p>21 A. No, I don't recall that.</p> <p>22 Q. Do you see where it says, "Don</p> <p>23 Bell has suggested that corrections in the</p> <p>24 nation's flock size can be attained by one of</p> <p>25 several means"? And then it --</p>
<p style="text-align: right;">171</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was a really catastrophe ahead, they wanted</p> <p>3 to get together and see they're -- if any</p> <p>4 recommendations could come to ease that,</p> <p>5 so...</p> <p>6 Q. And do you recall who made the</p> <p>7 comments you just described?</p> <p>8 MS. LEVINE: Objection to the</p> <p>9 form of the question.</p> <p>10 THE WITNESS: No, I don't know.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Do you recall that --</p> <p>13 A. In fact, I would say that it</p> <p>14 was probably -- if I remember right, it was</p> <p>15 quite a widely attended meeting, and so you</p> <p>16 would have a number of people expressing</p> <p>17 that.</p> <p>18 Q. Do you recall a discussion</p> <p>19 about surveying UEP's membership?</p> <p>20 A. Doing what?</p> <p>21 Q. Conducting a survey of UEP's</p> <p>22 membership.</p> <p>23 A. I don't recall it.</p> <p>24 Q. Do you see at the end of the</p> <p>25 left-hand column it says, "Will the industry</p>	<p style="text-align: right;">173</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And then it was four --</p> <p>4 A. I see that, yeah.</p> <p>5 Q. -- suggestions by Mr. Bell?</p> <p>6 A. Yeah.</p> <p>7 Q. Do you recall Mr. Bell making</p> <p>8 those suggestions?</p> <p>9 A. I don't, because I don't know</p> <p>10 if he was there. He might have been there.</p> <p>11 I have to look to see if he was there. I</p> <p>12 don't know.</p> <p>13 Q. At any time including prior to</p> <p>14 the meeting, do you recall Mr. Bell making</p> <p>15 those suggestions?</p> <p>16 A. Yeah, you know, you're spending</p> <p>17 a lot of time on that, and I can't figure out</p> <p>18 why because it's a perfectly good example of</p> <p>19 what we tried to educate our producers on</p> <p>20 every single month. So when you ask a</p> <p>21 question like that, you know, if I have any</p> <p>22 hesitation, it's just because I'm trying to</p> <p>23 figure out what the most -- I don't know</p> <p>24 anything about your legal stuff or anything,</p> <p>25 but I'm trying to my best ability to tell you</p>

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<p style="text-align: right;">174</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the truth of what was behind these meetings,</p> <p>3 what went on at the meetings. We talked</p> <p>4 about trying to balance supply and demand</p> <p>5 from the time I joined UEP in 1974. And did</p> <p>6 we talk about it at every board meeting?</p> <p>7 Yes, we did. We would say, okay, things are</p> <p>8 good, dah, dah, dah. Dah dah, dah. Don't</p> <p>9 have to do anything. Are they bad? Yeah,</p> <p>10 they're really bad. Maybe we should make a</p> <p>11 couple of recommendations to help producers.</p> <p>12 And we would.</p> <p>13 Q. Do you recall Mr. Bell</p> <p>14 suggesting that an industry wide policy of a</p> <p>15 minimum floor space allowance would result in</p> <p>16 a more ideal nation flock size?</p> <p>17 A. I don't recall that, but I see</p> <p>18 it here. I don't recall that.</p> <p>19 Q. You don't recall discussing</p> <p>20 that with him?</p> <p>21 A. No. And, of course, that was</p> <p>22 never any consideration by either the</p> <p>23 producer, Animal Welfare Committee or the</p> <p>24 Scientific Advisory Committee.</p> <p>25 Q. But you don't question whether</p>	<p style="text-align: right;">176</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Your counsel is making objections</p> <p>3 that don't make sense to me either.</p> <p>4 MS. LEVINE: Well, you're</p> <p>5 putting words in his mouth. One</p> <p>6 minute --</p> <p>7 THE WITNESS: Okay.</p> <p>8 MS. LEVINE: -- you asked the</p> <p>9 question, the witness gave an answer,</p> <p>10 you didn't like the answer apparently.</p> <p>11 Reask it.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. I missed the answer. Was the</p> <p>14 answer that it was discussed or that it</p> <p>15 wasn't?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question.</p> <p>18 THE WITNESS: What is the</p> <p>19 question again?</p> <p>20 BY MR. OLSON:</p> <p>21 Q. I was just trying to get --</p> <p>22 A. Was it discussed?</p> <p>23 Q. Yes, it was discussed?</p> <p>24 A. It was discussed.</p> <p>25 Q. I just didn't hear that. If</p>
<p style="text-align: right;">175</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 it was discussed by the egg producers --</p> <p>3 A. No, I don't.</p> <p>4 Q. -- in 1999, do you?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. Asked and answered.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. It was discussed. Correct?</p> <p>9 MS. LEVINE: Object to the form</p> <p>10 of the question. Asked and answered</p> <p>11 previously.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. The answer was yes?</p> <p>14 MS. LEVINE: Object to the form</p> <p>15 of the question. Mischaracterizes the</p> <p>16 witness' prior testimony.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Was that discussed Mr. Pope?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. Mischaracterizes the</p> <p>21 witness' testimony.</p> <p>22 THE WITNESS: I'm between a rock</p> <p>23 and hard place here because I never</p> <p>24 know what to say.</p> <p>25 BY MR. OLSON:</p>	<p style="text-align: right;">177</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that's what you said earlier, I apologize.</p> <p>3 - - -</p> <p>4 (Exhibit Pope-9, UEP Animal</p> <p>5 Welfare Committee Meeting Minutes, May</p> <p>6 15, 2000, Bates UE0215485 &amp; UE0215486,</p> <p>7 was marked for identification.)</p> <p>8 - - -</p> <p>9 BY MR. OLSON:</p> <p>10 Q. Let me hand you what's been</p> <p>11 marked Pope-9. This is Bates stamped</p> <p>12 UE0215485 through 86. It's titled, "UEP</p> <p>13 Animal Welfare Committee Meeting, May 15,</p> <p>14 2000." Just take a brief review and let me</p> <p>15 know when you're done, please.</p> <p>16 A. (Reviewing document.)</p> <p>17 Okay.</p> <p>18 Q. Do you recall this meeting?</p> <p>19 A. No.</p> <p>20 Q. Do you recall -- so you don't</p> <p>21 recall the discussion of cage space allowance</p> <p>22 issues reflected here?</p> <p>23 A. No, because I wouldn't have</p> <p>24 been at the Animal Welfare Committee meeting</p> <p>25 normally.</p>

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<p style="text-align: right;">178</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. So you don't know if you were</p> <p>3 at this one. Correct?</p> <p>4 A. No, I don't know.</p> <p>5 Q. Let me just then ask one other</p> <p>6 question, something that caught my eye. On</p> <p>7 page 2, there's a reference to UEP's Five</p> <p>8 Star Animal Care Program.</p> <p>9 A. Yeah.</p> <p>10 Q. Do you see that?</p> <p>11 A. Yeah.</p> <p>12 Q. Do you know what that refers</p> <p>13 to?</p> <p>14 A. That refers to the first</p> <p>15 guidelines we did in '83.</p> <p>16 Q. They were called Five Star</p> <p>17 Animal Care Program?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know what the five stars</p> <p>20 refers to?</p> <p>21 A. No, I didn't.</p> <p>22 Q. Five star?</p> <p>23 A. Didn't have a meaning. I think</p> <p>24 in advertising you call it puffery.</p> <p>25 Q. In other words, it's like a</p>	<p style="text-align: right;">180</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. You attended this meeting.</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. I'd like to look at page --</p> <p>7 perhaps you want to review up to, let's see,</p> <p>8 up to the middle of page 3.</p> <p>9 A. (Reviewing document.)</p> <p>10 Q. I want to focus at the top of</p> <p>11 page 3, there's a discussion about the --</p> <p>12 what's being called the animal welfare work.</p> <p>13 A. Okay.</p> <p>14 Q. And Wilcox --</p> <p>15 A. Yeah.</p> <p>16 Q. -- reports that two</p> <p>17 subcommittees have been formed to look into</p> <p>18 the options of implementing cage space</p> <p>19 requirements. Do you see that?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. Either through a voluntary</p> <p>22 program or a legislative mandatory program.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Were those subcommittees</p>
<p style="text-align: right;">179</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 great program?</p> <p>3 A. It was a great program.</p> <p>4 Q. Got it. You can put that</p> <p>5 aside.</p> <p>6 MS. LEVINE: Steve, I don't want</p> <p>7 to interrupt any documents, about</p> <p>8 noon, would that be good for a lunch</p> <p>9 break?</p> <p>10 MR. OLSON: Sure. Let's do</p> <p>11 maybe one or two more documents.</p> <p>12 - - -</p> <p>13 (Exhibit Pope-10, UEP Board of</p> <p>14 Directors May 15-18, 2000 Washington,</p> <p>15 D.C. Minutes, Bates UE0307919 -</p> <p>16 UE0307923, was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Let me hand you, Mr. Pope,</p> <p>21 what's been marked Pope-10. There is Bates</p> <p>22 stamp UE0307919 through 307923. It's -- I'll</p> <p>23 ask you, Mr. Pope, is this the minutes of a</p> <p>24 UEP Board of Directors meeting from May 15th</p> <p>25 to 18th, 2000?</p>	<p style="text-align: right;">181</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 formed?</p> <p>3 A. No.</p> <p>4 Q. Is that because you urged the</p> <p>5 board not to consider the legislative route?</p> <p>6 A. Yes.</p> <p>7 Q. So as I understand it, some</p> <p>8 members wanted to consider a legislative</p> <p>9 route?</p> <p>10 A. Yes.</p> <p>11 Q. And you thought that was a bad</p> <p>12 idea?</p> <p>13 A. Yes.</p> <p>14 Q. After you urged the board not</p> <p>15 to consider that, the board decided not to</p> <p>16 take the legislative approach. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. You can put that aside.</p> <p>19 - - -</p> <p>20 (Exhibit Pope-11, United Egg</p> <p>21 Producers Board of Directors Meeting</p> <p>22 Via Conference Call July 26, 2000,</p> <p>23 Bates UE0307912 - UE0307914, was</p> <p>24 marked for identification.)</p> <p>25 - - -</p>

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<p style="text-align: right;">182</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Let me hand you what's been</p> <p>4 marked Pope-11. This document is Bates</p> <p>5 stamped UE0307912 through 307914. I'll ask</p> <p>6 it -- I'll ask you, Mr. Pope, if you can</p> <p>7 identify this document as the minutes of a</p> <p>8 July 26, 2000, conference call of the UEP</p> <p>9 Board of Directors?</p> <p>10 A. Yes, it is.</p> <p>11 Q. And you were on that conference</p> <p>12 call. Correct?</p> <p>13 A. Yes. Uh-huh.</p> <p>14 Q. Why don't you just briefly</p> <p>15 review the document, please.</p> <p>16 A. (Reviewing document.)</p> <p>17 You want me to read the</p> <p>18 agreement?</p> <p>19 Q. If you could just take a quick</p> <p>20 glance at it. And if you need to study it</p> <p>21 later, let us know.</p> <p>22 A. Okay. (Reviewing document.)</p> <p>23 Q. Let's try it.</p> <p>24 A. Okay.</p> <p>25 Q. Do you recall who Jerry</p>	<p style="text-align: right;">184</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Is that right?</p> <p>3 A. Yes.</p> <p>4 Q. So to continue the industry</p> <p>5 export program, the proposal was that UEP</p> <p>6 would take over management of USEM. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that occurred. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And the attachment to this</p> <p>11 document sets out the general parameters of</p> <p>12 how UEP managed USEM. Correct?</p> <p>13 MS. LEVINE: Objection to the</p> <p>14 form of the question. Mischaracterizes</p> <p>15 both the document and lack of</p> <p>16 foundation.</p> <p>17 MR. OLSON: Let the witness</p> <p>18 answer. If it mischaracterizes it or</p> <p>19 not, that's the question.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. I'll just tell you while you're</p> <p>22 looking, if you look at the front, it says,</p> <p>23 "Lofgren called on Pope to explain the</p> <p>24 details by which UEP would provide</p> <p>25 management. The proposed management</p>
<p style="text-align: right;">183</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Faulkner is?</p> <p>3 A. Yes.</p> <p>4 Q. Who is he?</p> <p>5 A. He was the first manager of UEP</p> <p>6 in 1968, and he was a long-time industry</p> <p>7 representative. He had various jobs over the</p> <p>8 next 30 or 40 years. But his last one was as</p> <p>9 president of USEM, U.S. Egg Marketers, which</p> <p>10 was -- I mean, you'd have to ask one of their</p> <p>11 members what the purposes were. The only</p> <p>12 purpose that I'm aware of is that they wanted</p> <p>13 a vehicle that could export eggs. So -- and</p> <p>14 there was a like minded group that made up</p> <p>15 U.S. Egg Marketers.</p> <p>16 Q. Fair enough.</p> <p>17 Now, this document reflects</p> <p>18 that at this time Mr. Faulkner had stepped</p> <p>19 down at manager of USEM. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. He retired. Is that right?</p> <p>22 A. Yes, he had some health issues</p> <p>23 as well.</p> <p>24 Q. And USEM was not able to find a</p> <p>25 qualified manager to replace Mr. Faulkner.</p>	<p style="text-align: right;">185</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 arrangements, drafted by Pope and Gregory and</p> <p>3 agreed to by USEM's Executive Committee are</p> <p>4 hereby attached as part of these minutes"?</p> <p>5 A. Yes.</p> <p>6 Q. And that refers to the last</p> <p>7 page of this document which you helped draft.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Does this document generally</p> <p>11 reflect the meetings by which UEP would</p> <p>12 manage USEM?</p> <p>13 A. Yeah, if I was going to redo</p> <p>14 it, there's a couple of words I'd change, but</p> <p>15 that's it.</p> <p>16 Q. But generally it does?</p> <p>17 A. Generally we administered the</p> <p>18 program, yes.</p> <p>19 Q. Now, since you said it,</p> <p>20 unfortunately I have to ask you which words</p> <p>21 you'd change?</p> <p>22 A. I would look at it and say when</p> <p>23 UEP would structure a national egg export and</p> <p>24 enhanced marketing program, our intent with</p> <p>25 that was not to change what USEM was doing,</p>

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186	<p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 but -- and it looks like -- looks like we</p> <p>3 were going to be looking to enhance USEM and</p> <p>4 maybe put UEP producers over in USEM. I</p> <p>5 don't know what all the thinking was, but I</p> <p>6 think I would just change the wording on that</p> <p>7 a little bit to say that we would administer</p> <p>8 the program, the export program and</p> <p>9 hopefully, or whatever you want to say, that</p> <p>10 UEP members could participate if they wanted</p> <p>11 to, with the security of both of them being</p> <p>12 Capper-Volstead cooperatives.</p> <p>13 Q. Now, that point one that you</p> <p>14 just referred to as sort of the preface, but</p> <p>15 I'm just trying to shortcut things, if we</p> <p>16 wanted to know the general setup of how UEP</p> <p>17 managed USEM, we would look at this document.</p> <p>18 Correct?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. Now, let's just do one more</p> <p>24 exhibit before lunch, if we can. You can put</p> <p>25 that aside.</p>	188	<p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Animal Welfare Producer Committee chosen?</p> <p>3 A. Two ways. At the end of any,</p> <p>4 term of art, chairman, the first function</p> <p>5 that we had to do was we had -- the chairman</p> <p>6 was to select and appoint committee members</p> <p>7 to each of UEP's committees. There was sort</p> <p>8 of a criteria that we used sticking back to</p> <p>9 the old regional area in that the chairman</p> <p>10 tried to select by geographic area the best</p> <p>11 representation he could from that geographic</p> <p>12 area and have them work on the Animal Welfare</p> <p>13 Committee, somebody that they felt</p> <p>14 represented all of the producers, not just</p> <p>15 their own company. So there were people that</p> <p>16 were in line, there were people that were</p> <p>17 contract maybe. I don't even know, but there</p> <p>18 was a variety of producers on this committee.</p> <p>19 And the other thing that we did was you'd</p> <p>20 have a new chairman coming in and would not</p> <p>21 give the same kind of consideration, maybe,</p> <p>22 that the UEP staff would be. So the chairman</p> <p>23 would ask us if we had any suggestions on</p> <p>24 committee members, and we'd throw them out</p> <p>25 there. And then at the board meeting, if</p>
187	<p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Pope-12, 5/9/01 Memo,</p> <p>4 Bates UE0155086 - UE0155089, was</p> <p>5 marked for identification.)</p> <p>6 - - -</p> <p>7 BY MR. OLSON:</p> <p>8 Q. I'll hand you Pope-12. This is</p> <p>9 a document Bates stamped UE0155086 through</p> <p>10 155089. Before you read it, Mr. Pope, let me</p> <p>11 ask you a couple of intro questions. Who is</p> <p>12 Garth Sparboe?</p> <p>13 A. That was Bob Sparboe's son from</p> <p>14 the Sparboe Company.</p> <p>15 Q. And was Garth Sparboe a member</p> <p>16 of the Animal Welfare Producer Committee?</p> <p>17 A. He was.</p> <p>18 Q. He was one of the people tasks</p> <p>19 with figuring out how to implement the</p> <p>20 recommendations.</p> <p>21 A. Yes.</p> <p>22 Q. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. How were these members of the</p> <p>25 Producer Committee sometimes called the</p>	189	<p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 somebody felt all hot and bothered that they</p> <p>3 wanted to be on the Marketing Committee or</p> <p>4 the Animal Welfare Committee, we'd put them</p> <p>5 on.</p> <p>6 Q. Okay. Thank you. Why don't</p> <p>7 you just briefly review this document.</p> <p>8 Actually just the first two pages, if you</p> <p>9 can.</p> <p>10 A. Okay. (Reviewing document.)</p> <p>11 Q. Mr. Pope, let's try this: I</p> <p>12 might not even ask you to look at the first</p> <p>13 two pages. Can you identify this as a letter</p> <p>14 that you received along with others from</p> <p>15 Garth Sparboe?</p> <p>16 A. The committee did, but I'm</p> <p>17 assuming that I saw it somewhere, but I don't</p> <p>18 recall it necessarily.</p> <p>19 Q. You see your name as a</p> <p>20 recipient. Correct?</p> <p>21 A. Yeah. Okay. Yeah.</p> <p>22 Q. So you have no reason to doubt</p> <p>23 that you received it?</p> <p>24 A. No.</p> <p>25 Q. Do these happen to be your</p>

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<p style="text-align: right;">190</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 initials over on the right, over here?</p> <p>3 A. Yes.</p> <p>4 Q. Those are your initials?</p> <p>5 A. Yeah.</p> <p>6 Q. What would that mean?</p> <p>7 A. It would just mean it came</p> <p>8 across my desk.</p> <p>9 Q. We'll actually skip the first</p> <p>10 two pages. If you turn to page 3 --</p> <p>11 A. And I understand why you'd want</p> <p>12 to skip the first two pages, because they, I</p> <p>13 think, are really interesting.</p> <p>14 Q. I agree. If your counsel will</p> <p>15 give me free time to go over them, I will go</p> <p>16 over them at length. We'll ask her.</p> <p>17 A. Okay.</p> <p>18 Q. If you look at page 3, there's</p> <p>19 a heading that says, "A LOOK BACK."</p> <p>20 A. Yeah.</p> <p>21 Q. Mr. Sparboe writes, "Our</p> <p>22 committee in Washington last year voted to</p> <p>23 recommend to UEP board that we examine and/or</p> <p>24 recommend a legislatively mandated animal</p> <p>25 welfare program that would have involved</p>	<p style="text-align: right;">192</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 MR. OLSON: Is there anyone on</p> <p>4 the phone now who didn't make an</p> <p>5 appearance earlier?</p> <p>6 MR. GRAY: This is Monty Gray</p> <p>7 for National Food Corporation. I</p> <p>8 joined, oh, probably 45 minutes into</p> <p>9 the deposition this morning.</p> <p>10 MR. OLSON: Okay.</p> <p>11 MR. MCKENNEY: This is Jason</p> <p>12 McKenney from Gibson Dunn on behalf of</p> <p>13 defendant, Cal-Maine Foods. Like</p> <p>14 Monty, I joined just a little bit into</p> <p>15 the deposition this morning.</p> <p>16 MR. OLSON: Okay. Is there</p> <p>17 anyone else who didn't make an --</p> <p>18 MR. GOODMAN: William Goodman</p> <p>19 from Kasowitz Benson Torres &amp; Friedman</p> <p>20 for Nu-Cal. I also joined about 40</p> <p>21 minutes into it.</p> <p>22 MR. OLSON: What was your name</p> <p>23 again?</p> <p>24 MR. GOODMAN: William Goodman.</p> <p>25 MR. OLSON: Anyone else?</p>
<p style="text-align: right;">191</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 government oversight."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. "While this passed out of our</p> <p>6 committee it was soundly defeated when it</p> <p>7 reached the board level of UEP."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that's accurate. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. You can put that aside.</p> <p>13 MR. OLSON: We can take a break</p> <p>14 for lunch.</p> <p>15 MS. LEVINE: How long do you --</p> <p>16 MR. OLSON: Let's go off the</p> <p>17 record.</p> <p>18 VIDEOGRAPHER: The time is</p> <p>19 approximately 12:04 p.m. This ends</p> <p>20 tape two. We're now off the record.</p> <p>21 - - -</p> <p>22 (A recess was taken.)</p> <p>23 - - -</p> <p>24 (The following discussion was</p> <p>25 held off the video record.)</p>	<p style="text-align: right;">193</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Are you ready, Mr. Pope?</p> <p>3 THE WITNESS: Yes.</p> <p>4 - - -</p> <p>5 VIDEOGRAPHER: The time is</p> <p>6 approximately 1:11 p.m. This begins</p> <p>7 tape three. We are back on the</p> <p>8 record.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. Mr. Pope, let's talk about the</p> <p>11 certified program. Now, the certified</p> <p>12 program involved a phase in period. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. Of approximately six years. Is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. Who selected that length of</p> <p>18 time? Was that the Producer Committee?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question.</p> <p>21 THE WITNESS: Yeah. Well, the</p> <p>22 answer is not yes, but anything that</p> <p>23 had to do with the phase in or the</p> <p>24 implementation of the Scientific</p> <p>25 Advisory Committee guidelines was done</p>

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<p style="text-align: right;">194</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 by the Producer Committee. However,</p> <p>3 that was with -- as an example, our</p> <p>4 Producer Committee had suggested a</p> <p>5 ten-year phase in. That was</p> <p>6 unacceptable to the chain stores.</p> <p>7 Chain store says we want this shorter,</p> <p>8 we want to -- you know, so what do we</p> <p>9 say. Well, okay, so we ended up with</p> <p>10 whatever it was, six years or seven</p> <p>11 years, whatever it was. And so we had</p> <p>12 substantial input from then on that</p> <p>13 and other issues.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. When you refer to the chain</p> <p>16 stores, are you referring to any one or</p> <p>17 anything in particular?</p> <p>18 A. No. FMI. Most of them</p> <p>19 belonged to FMI.</p> <p>20 Q. What is FMI?</p> <p>21 A. Food Marketing Institute. It's</p> <p>22 a trade association for grocery stores.</p> <p>23 Q. Did you take steps to encourage</p> <p>24 FMI to encourage its members to support the</p> <p>25 certified program?</p>	<p style="text-align: right;">196</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 eggs. Correct?</p> <p>3 A. No.</p> <p>4 MS. LEVINE: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: And --</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Your answer is no?</p> <p>9 A. The answer is no. And the</p> <p>10 subsequent years validated that. Our</p> <p>11 producers were pretty quick.</p> <p>12 Q. And as president of UEP, you</p> <p>13 expected the program to result in higher</p> <p>14 prices. Correct?</p> <p>15 A. No.</p> <p>16 Q. Let me hand you what's been</p> <p>17 marked Pope-13.</p> <p>18 - - -</p> <p>19 (Exhibit Pope-13, Special</p> <p>20 Meeting of Area # 5 September 5, 2001</p> <p>21 Atlanta, Ga. Minutes, Bates UE0153459</p> <p>22 &amp; UE 0153460, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">195</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Sure.</p> <p>3 Q. As president of UEP, you</p> <p>4 expected the phase in of the UEP certified</p> <p>5 program would have an impact on egg supply.</p> <p>6 Correct?</p> <p>7 MS. LEVINE: Object to the form</p> <p>8 of the question.</p> <p>9 THE WITNESS: It was never part</p> <p>10 of the consideration at all.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. As president of UEP, did you</p> <p>13 expect the phase in of the certified program</p> <p>14 to have an impact on egg supply?</p> <p>15 MS. LEVINE: Object to the form</p> <p>16 of the question.</p> <p>17 THE WITNESS: What do you say?</p> <p>18 I mean, if we had hot weather in the</p> <p>19 summertime, I would have -- I would</p> <p>20 expect it to affect the supply. So</p> <p>21 among many other things, it would</p> <p>22 affect the supply from time to time.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. And as president of UEP, you</p> <p>25 expected the program to tighten the supply of</p>	<p style="text-align: right;">197</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. This is a document Bates</p> <p>3 stamped UE0153459 through 460. I'll ask you,</p> <p>4 Mr. Pope, after a brief review, if you can</p> <p>5 identify this as the minutes of a special</p> <p>6 meeting of area number 5 on September 5,</p> <p>7 2001, in Atlanta, Georgia?</p> <p>8 A. Yes.</p> <p>9 Q. You attended that meeting.</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. What was area 5?</p> <p>13 A. It was the -- basically the</p> <p>14 geographic area of the southeast.</p> <p>15 Q. Do you recall this meeting?</p> <p>16 A. Pardon?</p> <p>17 Q. Do you recall this meeting?</p> <p>18 A. Not this specific one. We had</p> <p>19 one every year. So we had the same area 5</p> <p>20 meeting every year for the last 10 or 15</p> <p>21 years.</p> <p>22 Q. So that --</p> <p>23 A. We would follow this one up and</p> <p>24 we would have one in the Northeast, so that</p> <p>25 all producers could come in, all producer</p>

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<p style="text-align: right;">198</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 members could come in and express their</p> <p>3 opinion on anything we were working on.</p> <p>4 Q. So every year up through the</p> <p>5 time you retired, you would have a special</p> <p>6 meeting of area 5. Is that right?</p> <p>7 A. Of all the areas, yes.</p> <p>8 Q. How many areas were there?</p> <p>9 A. Five.</p> <p>10 Q. You would attend those</p> <p>11 meetings?</p> <p>12 A. Sometimes.</p> <p>13 Q. Do you recall that in 2001</p> <p>14 producers across the country were expressing</p> <p>15 concern with an over supply problem?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question.</p> <p>18 THE WITNESS: I just -- okay,</p> <p>19 but I just don't recall it. I don't</p> <p>20 know.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. That's the question.</p> <p>23 A. I don't know.</p> <p>24 Q. Do you recall a suggestion in</p> <p>25 2001 that there needed to be a national</p>	<p style="text-align: right;">200</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall the discussion of</p> <p>6 that motion?</p> <p>7 A. Not that particular one, but,</p> <p>8 again, I have to remind you that we have</p> <p>9 discussed this very same issue for probably</p> <p>10 the 35 years that I worked for UEP every</p> <p>11 year. So it was just a matter of -- once</p> <p>12 again, I mean, that's part of our education</p> <p>13 process.</p> <p>14 Q. But this wasn't just education,</p> <p>15 the motion was to provide members with the</p> <p>16 commitment form. Correct?</p> <p>17 A. Well, it's still part of</p> <p>18 education. Because the commitment form</p> <p>19 doesn't really have any commitment to it.</p> <p>20 Q. You consider providing the</p> <p>21 commitment form to be part of education?</p> <p>22 A. Yes.</p> <p>23 Q. And this indicates that the</p> <p>24 motion to provide members with the commitment</p> <p>25 form reflecting the commitment I read into</p>
<p style="text-align: right;">199</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 meeting to address an over supply problem?</p> <p>3 MS. LEVINE: Object to the form</p> <p>4 of the question.</p> <p>5 THE WITNESS: Still, I just</p> <p>6 don't recall it.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. If you look at the bottom,</p> <p>9 you'll see a reference to a motion, the</p> <p>10 bottom of page 1.</p> <p>11 A. Yes.</p> <p>12 Q. Why don't you go ahead and just</p> <p>13 review the motion portion.</p> <p>14 A. (Reviewing document.)</p> <p>15 Okay.</p> <p>16 Q. So this refers to a motion to</p> <p>17 provide all members with a commitment form</p> <p>18 that states, "I agree by November 1, 2001 to</p> <p>19 leave vacant housing that represents 5% of my</p> <p>20 production for a period of 6 months. If it</p> <p>21 is not possible to leave a house or houses</p> <p>22 vacant, I would then agree to reduce my flock</p> <p>23 size by 5%."</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">201</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the record was passed. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. Now, what's the purpose of</p> <p>5 leaving vacant housing for a period of six</p> <p>6 months or reducing flock size by 5 percent?</p> <p>7 What's the purpose of that?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question.</p> <p>10 THE WITNESS: Well, the intent</p> <p>11 was -- and here again, I don't recall</p> <p>12 it, but it is the same one that has</p> <p>13 been made a number of times, is that</p> <p>14 it better matches the demand for the</p> <p>15 product. When you look at it, if you</p> <p>16 take your flock out, obviously it</p> <p>17 adjusts the demand at any particular</p> <p>18 time. And that was just one of the</p> <p>19 services that we did in making</p> <p>20 recommendations.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. If you turn to page 2, you'll</p> <p>23 see another motion referenced at the top.</p> <p>24 Have you reviewed that one?</p> <p>25 A. Okay. Yeah.</p>

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<p style="text-align: right;">202</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And that refers to a motion for</p> <p>3 all members to delay their hatch of baby</p> <p>4 chicks by four weeks for a six-month period</p> <p>5 starting November 1. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. The minutes indicate that</p> <p>8 motion passed as well. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. The minutes say, "Both motions</p> <p>11 included a provision for verifying that</p> <p>12 members were meeting their commitment."</p> <p>13 Do you see that?</p> <p>14 A. A voluntary commitment, yes.</p> <p>15 Q. A provision for verifying that</p> <p>16 they were meeting their voluntary commitment.</p> <p>17 Right?</p> <p>18 MS. LEVINE: Objection. Asked</p> <p>19 and answered.</p> <p>20 THE WITNESS: Well --</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Do you consider that just</p> <p>23 education as well, sir?</p> <p>24 A. Yeah, I mean, any time they</p> <p>25 don't have to do it, I mean, we would love to</p>	<p style="text-align: right;">204</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 what the hell ever you want. I never</p> <p>3 heard that one time in 30 years.</p> <p>4 - - -</p> <p>5 (Exhibit Pope-14, Special Called</p> <p>6 UEP Marketing Conference Call</p> <p>7 September 24, 2001, Bates UE0153457 &amp;</p> <p>8 UE0153458, was marked for identification.</p> <p>9 - - -</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Let me hand you what's been</p> <p>12 marked as Pope-14. This is a document Bates</p> <p>13 stamped UE0153457 through 458. Give you a</p> <p>14 moment to review it.</p> <p>15 A. (Reviewing document.)</p> <p>16 Q. Can you identify this document</p> <p>17 as the minutes of a special called UEP</p> <p>18 marketing conference call --</p> <p>19 A. Yes.</p> <p>20 Q. -- from September 24, 2001?</p> <p>21 A. Yes.</p> <p>22 Q. And you were on that conference</p> <p>23 call. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall the conference</p>
<p style="text-align: right;">203</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 think that we were influential enough that</p> <p>3 they take these recommendations and -- now,</p> <p>4 35 years of history has told me that's not</p> <p>5 what happens. Yes, some of them will. Yes,</p> <p>6 it may be modest. But when you have a</p> <p>7 voluntary program, you don't know who did and</p> <p>8 who didn't, even if they say they did.</p> <p>9 Q. Did anyone ever advise you,</p> <p>10 sir, that UEP could -- UEP and its members</p> <p>11 could do whatever they wanted as long as no</p> <p>12 one was forced to do it?</p> <p>13 MS. LEVINE: You may answer the</p> <p>14 question unless it pertains to an</p> <p>15 attorney-client discussion.</p> <p>16 THE WITNESS: We were never told</p> <p>17 we could do whatever we wanted to do.</p> <p>18 Because even under Capper-Volstead,</p> <p>19 you were limited -- it was a limited</p> <p>20 -- it was a limited provision in</p> <p>21 there, I mean, and I don't know what</p> <p>22 all the limitations are, but I knew I</p> <p>23 would not go in, and I never heard</p> <p>24 anybody say at a meeting, hey, UEP</p> <p>25 you're all egg producers, you can do</p>	<p style="text-align: right;">205</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 call?</p> <p>3 A. No.</p> <p>4 Q. There's a reference to a Mr.</p> <p>5 Baker at the beginning of the minutes.</p> <p>6 A. Yes.</p> <p>7 Q. Do you know who that is?</p> <p>8 A. Yes.</p> <p>9 Q. Who is Mr. Baker?</p> <p>10 A. He's a -- I don't know whether</p> <p>11 he is an officer, but he is a top management</p> <p>12 person with Waldbaum's maybe at this time and</p> <p>13 then Michael's later on. I don't know the</p> <p>14 timing of any of that. But they were a</p> <p>15 member.</p> <p>16 Q. And the minutes reflect Mr.</p> <p>17 Baker noting that the UEP office had sent a</p> <p>18 package of material to all members detailing</p> <p>19 the problem with over supply and that the</p> <p>20 purpose of the call was to discuss that</p> <p>21 material. Do you see that?</p> <p>22 A. Yeah, I read it a little</p> <p>23 different. It says, "...and the problem in</p> <p>24 hopes that ideas might come forward..."</p> <p>25 Actually --</p>

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<p style="text-align: right;">206</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. I was going to get to that</p> <p>3 next. But first it says there was a package</p> <p>4 sent to all members and the purpose of the</p> <p>5 call was to discuss this material. Right?</p> <p>6 MS. LEVINE: I think the witness</p> <p>7 is allowed to read the whole sentence,</p> <p>8 not just half a sentence which is what</p> <p>9 he was doing.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. And the problem. To discuss</p> <p>12 the problem, too. Right?</p> <p>13 A. Yes.</p> <p>14 Q. So I was just doing it in</p> <p>15 pieces. I was first asking you if you recall</p> <p>16 the package of material that was sent to all</p> <p>17 members?</p> <p>18 A. No, I don't know what it was in</p> <p>19 it.</p> <p>20 Q. The purpose of the call was to</p> <p>21 discuss that package and the -- what's</p> <p>22 referred to as an over supply problem.</p> <p>23 Correct?</p> <p>24 MS. LEVINE: Objection --</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">208</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 relating to this, to a supply/demand program,</p> <p>3 if that is what this program was, we were</p> <p>4 sure doing a crappy job on it, weren't we?</p> <p>5 Because obviously we were over supplied.</p> <p>6 They had started their animal welfare</p> <p>7 program, hadn't they?</p> <p>8 Q. I'm just reading the words that</p> <p>9 are in the document. The purpose of this</p> <p>10 specially called conference call was to</p> <p>11 discuss ideas about how to balance supply</p> <p>12 with market demand. Correct?</p> <p>13 A. Yes.</p> <p>14 MS. LEVINE: Objection to form</p> <p>15 of the question. No foundation for</p> <p>16 this witness.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Now, if you turn to the second</p> <p>19 page, at the top you see where it says, "Gene</p> <p>20 Gregory said that the UEP staff had been</p> <p>21 working on an idea that would encourage</p> <p>22 members to take one bird out of each cage</p> <p>23 until a total of 5% of the house capacity had</p> <p>24 been reached."</p> <p>25 Do you see that?</p>
<p style="text-align: right;">207</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: -- to the form of</p> <p>3 the question.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. Have you answered the question?</p> <p>6 A. Yes.</p> <p>7 Q. And to see if there are ideas</p> <p>8 about how to balance supply with market</p> <p>9 demand. Correct?</p> <p>10 MS. LEVINE: Same objection.</p> <p>11 THE WITNESS: That's what --</p> <p>12 that's what was discussed, yes.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. And that was the purpose of</p> <p>15 this specially called conference call.</p> <p>16 Correct?</p> <p>17 MS. LEVINE: Object to the form</p> <p>18 of the question.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Did you answer that one?</p> <p>21 A. I'm trying to figure out how to</p> <p>22 do it. You know, to me, you asked me to read</p> <p>23 this. And I'm just -- I want you to be fair</p> <p>24 about this, too. As I read this, it is a</p> <p>25 perfect, perfect example of why when you keep</p>	<p style="text-align: right;">209</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall working on that</p> <p>4 idea?</p> <p>5 A. I didn't work on it.</p> <p>6 Q. If you look down in the middle,</p> <p>7 there's a sentence that says, Irving Isaacson</p> <p>8 was asked about legal problems with the</p> <p>9 committed program. Why don't you just review</p> <p>10 the second page, if you haven't already.</p> <p>11 A. I don't have a second page.</p> <p>12 MS. SUMNER: That's been</p> <p>13 redacted. I'm not sure where you're</p> <p>14 reading from, but there's a redacted</p> <p>15 copy that you put out for your</p> <p>16 exhibit.</p> <p>17 MR. OLSON: I'm not sure how</p> <p>18 that happened. Maybe you guys clawed</p> <p>19 it back, so let me just --</p> <p>20 MS. LEVINE: This is on our</p> <p>21 privilege log.</p> <p>22 MR. OLSON: Strike that. Could</p> <p>23 I see someone's copy? You can keep</p> <p>24 it, sir.</p> <p>25 MS. LEVINE: You can keep it.</p>

53 (Pages 206 to 209)

<p style="text-align: right;">210</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Well, let me ask this: Who is</p> <p>4 Paul Bahan?</p> <p>5 A. He was a producer member from</p> <p>6 Southern California.</p> <p>7 Q. He's not a lawyer?</p> <p>8 A. You know, I don't know.</p> <p>9 Q. Did you ever --</p> <p>10 A. I do recall that there was --</p> <p>11 somebody said he was a lawyer. I have no</p> <p>12 idea. I didn't know Paul real well.</p> <p>13 Q. Did you ever, as UEP president,</p> <p>14 ask Paul Bahan for legal advice?</p> <p>15 MS. LEVINE: I'm going to object</p> <p>16 to this line of questioning. You were</p> <p>17 reading from a document that was</p> <p>18 supposed to be sequestered.</p> <p>19 MR. OLSON: I'm not reading from</p> <p>20 any document. I'm asking --</p> <p>21 MS. LEVINE: Your questions are</p> <p>22 very clear that you're reading from a</p> <p>23 document, a portion of which was</p> <p>24 supposed to be sequestered. You can</p> <p>25 ask any question about the document</p>	<p style="text-align: right;">212</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: I don't need to</p> <p>3 debate you. I'm just asking if you're</p> <p>4 willing so we don't inconvenience</p> <p>5 anybody, to yield that privilege claim</p> <p>6 now?</p> <p>7 MS. LEVINE: No, because it</p> <p>8 should have been done before.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. You can put that aside.</p> <p>11 - - -</p> <p>12 (Exhibit Pope-15, 9/27/01</p> <p>13 Letter, Bates UE0204500 - EU0204504,</p> <p>14 was marked for identification.)</p> <p>15 - - -</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Let me hand you what's been</p> <p>18 marked Pope-15. This document is Bates</p> <p>19 stamped UE0204500 through 504. And I'll ask</p> <p>20 if you can identify this as a document sent</p> <p>21 to UEP members in September 2001?</p> <p>22 A. The only thing I can say about</p> <p>23 it is it appears, since I don't recall it, it</p> <p>24 appears that it was sent to our members.</p> <p>25 That's all I can say.</p>
<p style="text-align: right;">211</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 other than what's been redacted.</p> <p>3 MR. OLSON: I'm putting the</p> <p>4 document aside.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Did you ever ask Paul Bahan</p> <p>7 for --</p> <p>8 A. No.</p> <p>9 Q. -- legal advice?</p> <p>10 A. No.</p> <p>11 MR. OLSON: Do you want to yield</p> <p>12 the privilege that you claimed over</p> <p>13 that portion of the document now or</p> <p>14 later?</p> <p>15 MS. LEVINE: If you wanted to</p> <p>16 have moved on that, you should have</p> <p>17 done it before you brought a</p> <p>18 76-year-old witness. You've had this</p> <p>19 document, you've had the log. It</p> <p>20 would have been proper to move before</p> <p>21 the court on any documents you think</p> <p>22 we improperly put on a privilege log.</p> <p>23 I'm not going to take the time now to</p> <p>24 debate a legal issue which you had</p> <p>25 notice of.</p>	<p style="text-align: right;">213</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. So you don't recall this</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. The document at the top of the</p> <p>6 second page refers to a voluntarily supply</p> <p>7 program.</p> <p>8 A. Yes.</p> <p>9 Q. And to an attachment which is</p> <p>10 the last page titled, "Voluntarily Supply</p> <p>11 Program To Meet Market Demand."</p> <p>12 A. Okay.</p> <p>13 Q. I'm just going to ask if you</p> <p>14 recall seeing that page about the voluntary?</p> <p>15 A. No, I don't. I didn't -- I</p> <p>16 really didn't. I had very little to do with</p> <p>17 the marketing although I know I had the</p> <p>18 ultimate responsibility and I -- you know, it</p> <p>19 probably came across my desk, but I don't</p> <p>20 remember the specific document.</p> <p>21 Q. Fair enough. You can put it</p> <p>22 aside.</p> <p>23 A. It's hard for me to even make a</p> <p>24 comment on it other than, once again, it</p> <p>25 demonstrated our determination to make sure</p>

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<p style="text-align: right;">214</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that we were within Capper-Volstead</p> <p>3 guidelines once again. This is about the</p> <p>4 third or fourth time we have done that. So I</p> <p>5 think we've made it very clear anyhow.</p> <p>6 MS. LEVINE: Mr. Pope, try as</p> <p>7 hard as you can just to answer the</p> <p>8 question, there's not one on the</p> <p>9 table, because there's limited time</p> <p>10 and we're here to answer counsel's</p> <p>11 question.</p> <p>12 - - -</p> <p>13 (Exhibit Pope-16, Document</p> <p>14 titled What Better Time to Reduce Cage</p> <p>15 Density and Put Money In Your Pocket,</p> <p>16 Bates UE0067353, was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Let me hand you what's been</p> <p>21 marked Pope-16, a one-page document, Bates</p> <p>22 stamped UE0067353. I'll ask you to review</p> <p>23 the document and then identify it for us,</p> <p>24 please.</p> <p>25 A. Well, it was -- I'm assuming it</p>	<p style="text-align: right;">216</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Husbandry Guidelines." Right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. You can put that aside.</p> <p>5 A. All these questions that you</p> <p>6 ask me about this are asked in a tone like</p> <p>7 it's something we shouldn't be doing. I</p> <p>8 don't like that. I'm just saying what I</p> <p>9 think. That's all.</p> <p>10 Q. I understand.</p> <p>11 A. I didn't say you were, I just</p> <p>12 said that's the impression I get.</p> <p>13 Q. I'm not -- I apologize for that</p> <p>14 tone.</p> <p>15 A. You're not deciding what --</p> <p>16 Q. I'm not trying to actually use</p> <p>17 any tone.</p> <p>18 A. Sure you are.</p> <p>19 Q. I'm certainly not trying to use</p> <p>20 an accusatory tone.</p> <p>21 A. That would be good because it</p> <p>22 just -- you know, I don't get rattled very</p> <p>23 easy, but it might upset me and it will turn</p> <p>24 bad, wouldn't it?</p> <p>25 Q. I'm not trying to rattle you or</p>
<p style="text-align: right;">215</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was attached to one of our newsletters. I</p> <p>3 don't know whether that's right or not, but</p> <p>4 that's what I'm assuming. Simply, again,</p> <p>5 encouraging two positive things. One is</p> <p>6 consistent with all our recommendations on</p> <p>7 trying to better balance supply and demand by</p> <p>8 voluntary suggestions; and number two, trying</p> <p>9 to make a case in a modest way for jump</p> <p>10 starting our animal welfare program which I</p> <p>11 thought was a good thing.</p> <p>12 Q. So this is commentary that you</p> <p>13 drafted. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. For purposes of distribution to</p> <p>16 UEP members. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. It's titled, "What Better Time</p> <p>19 to Reduce Cage Density and Put Money In Your</p> <p>20 Pocket." Correct?</p> <p>21 A. Uh-huh.</p> <p>22 Q. The recommendation is to</p> <p>23 give -- it says, "Give your animal welfare</p> <p>24 program a jump start by reducing the cage</p> <p>25 density to meet UEP's Industry Animal</p>	<p style="text-align: right;">217</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 upset you or make you feel defensive.</p> <p>3 MS. LEVINE: Mr. Pope, just</p> <p>4 listen to his questions.</p> <p>5 - - -</p> <p>6 (Exhibit Pope-17, UEP Board of</p> <p>7 Directors conference call April 4,</p> <p>8 2002 Minutes, Bates UE0210657 &amp;</p> <p>9 UE0210658, was marked for</p> <p>10 identification.)</p> <p>11 - - -</p> <p>12 BY MR. OLSON:</p> <p>13 Q. I'm handing you what's been</p> <p>14 marked Pope-17 which is Bates stamped</p> <p>15 UE0210657 through 658.</p> <p>16 A. Yes.</p> <p>17 Q. I'll ask if you can identify</p> <p>18 this as the minutes of the UEP Board of</p> <p>19 Directors conference call from April 4, 2002?</p> <p>20 A. Yes, it appears so.</p> <p>21 Q. And you participated in that</p> <p>22 conference call. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. Why don't you go ahead and just</p> <p>25 review the document and let us know when</p>

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<p style="text-align: right;">218</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you're done, please.</p> <p>3 A. (Reviewing document.)</p> <p>4 Okay.</p> <p>5 Q. Now, this document reflects</p> <p>6 that certain motions were made before the</p> <p>7 board of directors at this time --</p> <p>8 A. Yes.</p> <p>9 Q. -- relating to the program.</p> <p>10 Correct?</p> <p>11 A. Uh-huh. Yes.</p> <p>12 Q. And the first one involved a</p> <p>13 change that is sometimes referred to as the</p> <p>14 100 percent rule. Correct?</p> <p>15 MS. LEVINE: Objection to the</p> <p>16 form of the question.</p> <p>17 THE WITNESS: Yes. It's</p> <p>18 concerned about the 100 percent rule.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. And just to be clear, the</p> <p>21 change was under the original certified</p> <p>22 program the company could be certified if 100</p> <p>23 percent of its producer packer facilities</p> <p>24 complied with the guidelines. Correct?</p> <p>25 A. As it is here, that's right.</p>	<p style="text-align: right;">220</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 producer packer facilities met the</p> <p>3 guidelines. Correct?</p> <p>4 A. Well, I don't -- I just don't</p> <p>5 remember that part of it. Sorry.</p> <p>6 Q. But this reflects that there</p> <p>7 was some change that was passed --</p> <p>8 A. Yes, the producers saw the</p> <p>9 loopholes in it.</p> <p>10 Q. And then there's a motion that</p> <p>11 relates to the audit system. Is that</p> <p>12 anything that you had involvement with?</p> <p>13 MS. LEVINE: It says change.</p> <p>14 THE WITNESS: Limited.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. What was your involvement with</p> <p>17 the audit system?</p> <p>18 A. How we would audit it and</p> <p>19 achieve the most credible program, how could</p> <p>20 we do that best, what was the best way to do</p> <p>21 that.</p> <p>22 Q. Were you involved in</p> <p>23 determining the audit scoring system?</p> <p>24 A. No.</p> <p>25 Q. Who at UEP had the primary</p>
<p style="text-align: right;">219</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Now, I have to say that this was -- this</p> <p>3 whole area was the most difficult thing we</p> <p>4 had to handle.</p> <p>5 Q. The 100 percent rule?</p> <p>6 A. No. The certification of the</p> <p>7 program itself. I hope you can well imagine</p> <p>8 that UEP staff was just about shocked when</p> <p>9 the UEP board adopted the recommendation from</p> <p>10 the Scientific Advisory Committee and the</p> <p>11 Producer Marketing Committee or Animal</p> <p>12 Welfare Committee, that they wanted a</p> <p>13 certified program and they wanted UEP to do</p> <p>14 it. You know, it puts us in the worst</p> <p>15 possible position, but we had our marching</p> <p>16 orders because we would be put in a position</p> <p>17 then of having a producer not meet the</p> <p>18 guidelines and then we had to tell them they</p> <p>19 had to get off the guidelines, and we did</p> <p>20 that. It was not an easy thing to do.</p> <p>21 Q. Now, if we could just stick to</p> <p>22 the 100 percent rule, exactly what it</p> <p>23 encompassed, that's what I'd like to focus</p> <p>24 on. Originally under the program a company</p> <p>25 could be certified if 100 percent of its</p>	<p style="text-align: right;">221</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 responsibility for that?</p> <p>3 A. Well, first of all, none of us.</p> <p>4 It was up to the producer Animal Welfare</p> <p>5 Committee. The person assigned to get it</p> <p>6 done after they tell us would be Gene.</p> <p>7 Q. There's a reference in motion</p> <p>8 2, after mentioning the audit point system,</p> <p>9 to the fact that "...failure to meet the cage</p> <p>10 space allowance will be cause for failure of</p> <p>11 the audit regardless of the total points</p> <p>12 achieved."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall that motion being</p> <p>16 passed?</p> <p>17 A. I don't recall the specific</p> <p>18 motion, but I know that that was part of the</p> <p>19 guideline.</p> <p>20 Q. Did you -- was it your view as</p> <p>21 president of UEP that obtaining 100 percent</p> <p>22 participation of the industry in the program</p> <p>23 was an important goal?</p> <p>24 A. It was never anticipated that</p> <p>25 we would get to 100 percent. It would have</p>

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<p style="text-align: right;">222</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 been really neat. But we knew better. It's</p> <p>3 a voluntary program, so -- you know.</p> <p>4 Q. Did you take steps to work</p> <p>5 toward that goal of an industry wide</p> <p>6 compliance with the program?</p> <p>7 A. If you're meaning at every</p> <p>8 opportunity did we encourage producers of the</p> <p>9 merits of being on the program, we did that</p> <p>10 time and time again.</p> <p>11 - - -</p> <p>12 (Exhibit Pope-18, UEA Further</p> <p>13 Processors Animal Welfare Briefing</p> <p>14 Breakfast Caesars Palace - Las Vegas,</p> <p>15 Nevada April 22, 2002 Minutes, Bates</p> <p>16 MPS-00122892 &amp; MPS-00122893, was</p> <p>17 marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Let me hand you what's been</p> <p>21 marked Pope-18. This document is Bates</p> <p>22 stamped MPS-00122892 through 93. Why don't</p> <p>23 you review it, let us know when you're done.</p> <p>24 A. (Reviewing document.)</p> <p>25 Okay.</p>	<p style="text-align: right;">224</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 egg cartons, etc."</p> <p>3 A. Right.</p> <p>4 Q. What was the purpose of putting</p> <p>5 the seal on egg cases and egg cartons?</p> <p>6 A. Well, it had a dual purpose in</p> <p>7 my mind. Just like a nutritional labeling or</p> <p>8 anything else, the customer might like to</p> <p>9 know that there are some industry guidelines</p> <p>10 for the carrying of our animals. And we had</p> <p>11 producers ask for that. Basically all it</p> <p>12 says, when they finally adopted one which</p> <p>13 took some time, was that this company is</p> <p>14 participating in animal welfare guidelines as</p> <p>15 developed by UEP or something along that</p> <p>16 wording. And if they wanted a copy of the</p> <p>17 guidelines, you know, probably an 800 number</p> <p>18 on there to call us or something. I don't</p> <p>19 know.</p> <p>20 Q. You don't recall for sure that</p> <p>21 there was an 800?</p> <p>22 A. No, I don't. No.</p> <p>23 Q. At the bottom it refers to some</p> <p>24 motions, and there's a motion that was moved</p> <p>25 and seconded to form an UEA committee to</p>
<p style="text-align: right;">223</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you identify this as the</p> <p>3 minutes of a UEP Further Processors Animal</p> <p>4 Welfare Briefing Breakfast in Las Vegas on</p> <p>5 April 22, 2002?</p> <p>6 A. Yes.</p> <p>7 Q. And you attended that.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And what was the purpose of</p> <p>11 having a UEA Further Processors Animal</p> <p>12 Welfare Briefing Breakfast?</p> <p>13 A. Because they asked for it,</p> <p>14 their chairman asked for it.</p> <p>15 Q. It refers at the bottom --</p> <p>16 well, in the middle it refers to you</p> <p>17 announcing an intent to develop an animal</p> <p>18 welfare seal. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Was that your idea?</p> <p>21 A. You know, I just don't recall</p> <p>22 whether it was mine or the Animal Welfare</p> <p>23 Committee's. I don't know.</p> <p>24 Q. It says it "...could be used by</p> <p>25 certified companies and placed on egg cases,</p>	<p style="text-align: right;">225</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 develop discussion points and coordination of</p> <p>3 animal husbandry guidelines with UEP. Do you</p> <p>4 see that?</p> <p>5 A. Yes.</p> <p>6 Q. And that motion carried.</p> <p>7 Correct?</p> <p>8 A. Yes.</p> <p>9 Q. What was the name of that</p> <p>10 committee?</p> <p>11 A. I don't know that it had a</p> <p>12 name. The chairman probably picked out three</p> <p>13 or four people and asked them to do it. I</p> <p>14 don't think we had a designated committee for</p> <p>15 that, for the processor.</p> <p>16 Q. So there wasn't a formal</p> <p>17 committee done to carry out that motion?</p> <p>18 A. No.</p> <p>19 Q. But there was an informal type</p> <p>20 of committee?</p> <p>21 MS. LEVINE: Objection to the</p> <p>22 form of the question. The witness</p> <p>23 just answered the question.</p> <p>24 THE WITNESS: The further age</p> <p>25 processors really surprised us</p>

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<p style="text-align: right;">226</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 because --</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Well, if we can start with the</p> <p>5 answer to my question. Was there an informal</p> <p>6 committee done --</p> <p>7 A. No.</p> <p>8 Q. -- to carry out the motion that</p> <p>9 was passed?</p> <p>10 A. No.</p> <p>11 Q. So when you were referring to</p> <p>12 the chairman picking out a few people, who</p> <p>13 were you talking about?</p> <p>14 A. I don't know who he was talking</p> <p>15 about. I don't remember who he had do this,</p> <p>16 to review our guidelines and come back to UEP</p> <p>17 or --</p> <p>18 Q. What chairman are you referring</p> <p>19 to, do you recall?</p> <p>20 A. I don't know who the chairman</p> <p>21 was. Does it say?</p> <p>22 Q. Elliot Gibber.</p> <p>23 A. Okay. He was chairman at the</p> <p>24 time, then.</p> <p>25 Q. Do you recall Mr. Gibber</p>	<p style="text-align: right;">228</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Let me hand you what's been</p> <p>4 marked Pope-19. This is a document Bates</p> <p>5 stamped UE0159036 through 037. And after you</p> <p>6 review it -- let us know when you reviewed</p> <p>7 it, please.</p> <p>8 A. (Reviewing document.)</p> <p>9 Okeydoke.</p> <p>10 Q. Can you identify this as a</p> <p>11 letter you wrote on July 16, 2002?</p> <p>12 A. These three people, yes.</p> <p>13 Q. And sent to members from FMI</p> <p>14 and one from NCCR?</p> <p>15 A. Yes.</p> <p>16 Q. We've touched on FMI, but can</p> <p>17 you remind us what FMI is?</p> <p>18 A. FMI is the -- one of the</p> <p>19 largest trade associations in the country.</p> <p>20 And they represent grocery stores, so what we</p> <p>21 would term as supermarkets. And so all the</p> <p>22 ones that you would expect to be in that</p> <p>23 category were in that category. They were</p> <p>24 members of FMI, had a very active program.</p> <p>25 Q. What is NCCR?</p>
<p style="text-align: right;">227</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 picking some UEA members to review the</p> <p>3 guidelines?</p> <p>4 A. No.</p> <p>5 Q. I'm a little unclear on your</p> <p>6 testimony.</p> <p>7 A. Well, you asked me who they --</p> <p>8 if I remember him asking somebody. You know,</p> <p>9 he asked somebody, but I don't know who they</p> <p>10 were.</p> <p>11 Q. Fair enough. You can put that</p> <p>12 aside.</p> <p>13 A. No, I got to make -- I want to</p> <p>14 make another issue.</p> <p>15 Q. Well --</p> <p>16 MS. LEVINE: Mr. Pope --</p> <p>17 MR. OLSON: We do have limited</p> <p>18 time.</p> <p>19 MS. LEVINE: -- the whole</p> <p>20 purpose is that he can ask questions.</p> <p>21 - - -</p> <p>22 (Exhibit Pope-19, 7/16/02</p> <p>23 Letter, Bates UE0159036 &amp; UE0159037,</p> <p>24 was marked for identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">229</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. National -- it represents the</p> <p>3 fast food restaurant business. McDonald's</p> <p>4 were a member, Arby's.</p> <p>5 Q. Chain restaurants?</p> <p>6 A. They didn't have to be, but I</p> <p>7 guess that's really what -- I don't -- I</p> <p>8 can't speak to their membership. You have to</p> <p>9 ask Terrie. I don't even know that -- I</p> <p>10 don't know the membership of FMI other than</p> <p>11 they have a public address book or something</p> <p>12 like that, membership book, that I've seen.</p> <p>13 Q. Would it be fair to say that</p> <p>14 the members of FMI and the members of NCCR</p> <p>15 were customers of UEP members?</p> <p>16 A. Yes.</p> <p>17 Q. And among other things in this</p> <p>18 letter, you are inviting assistance in FMI</p> <p>19 and NCCR in getting their members to ask for</p> <p>20 certified eggs?</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 THE WITNESS: The answer to that</p> <p>24 is, yes, we would encourage them to do</p> <p>25 that.</p>

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<p style="text-align: right;">230</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. And that's one of the things</p> <p>4 you do in this letter. Correct?</p> <p>5 A. Yes, we encourage them to do</p> <p>6 that.</p> <p>7 Q. If you look at the second page,</p> <p>8 you put in a heading that says, "Another</p> <p>9 issue: The good news, and bad news."</p> <p>10 Do you see that?</p> <p>11 A. Right.</p> <p>12 Q. And you refer to a press</p> <p>13 release going off without controversy, and</p> <p>14 that's the good news. Do you see that?</p> <p>15 A. Uh-huh.</p> <p>16 Q. You do?</p> <p>17 A. Yes.</p> <p>18 Q. And what press release are you</p> <p>19 referring to?</p> <p>20 A. I don't remember. I don't have</p> <p>21 any idea. If it isn't attached, I don't know</p> <p>22 what it is. It might have been done. I</p> <p>23 think at this time we had at least a small</p> <p>24 program with a public relations firm, so I'm</p> <p>25 assuming that they put it together, but I</p>	<p style="text-align: right;">232</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 will be able to ask questions.</p> <p>3 A. I don't care.</p> <p>4 Q. And let you make whatever</p> <p>5 comment you want.</p> <p>6 A. The thought is all gone with</p> <p>7 everybody at the time -- by the time we get</p> <p>8 back to it. So that's why I'm going to do</p> <p>9 it. I'm here to testify and I'm going to do</p> <p>10 it whether you like it or not.</p> <p>11 Q. I have limited time, but --</p> <p>12 A. Yeah. Well, so do I.</p> <p>13 Q. Let's hear it.</p> <p>14 A. No, I don't. I take that back.</p> <p>15 I'm retired, I've got -- every day is</p> <p>16 Saturday.</p> <p>17 The point is in this letter</p> <p>18 there's two very significant things that have</p> <p>19 taken place when this goes out. Number one,</p> <p>20 FMI and NCCR said to us that it can't be six</p> <p>21 years -- it can't be ten years, it's got to</p> <p>22 be ten -- I mean six. They said you've got</p> <p>23 to have -- everybody has got to do it that's</p> <p>24 on the program. That was the 100 percent</p> <p>25 rule. Okay. Now, you take those things, and</p>
<p style="text-align: right;">231</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 don't really remember that.</p> <p>3 Q. You say, "The bad news is that</p> <p>4 very few of our customers are asking that the</p> <p>5 guidelines be part of their specifications."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. By "our customers," you mean</p> <p>9 the customers of UEP members. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then at the end, you say,</p> <p>12 "This program will fail if our customers are</p> <p>13 not committed to the program to the same</p> <p>14 degree as the industry." Right?</p> <p>15 A. Yes.</p> <p>16 Q. And then you say, "We welcome</p> <p>17 your advice and assistance." Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Thanks. You can put that</p> <p>20 aside.</p> <p>21 A. But now -- I'm sorry, but you</p> <p>22 take these selected things out which really</p> <p>23 make me unhappy, and so I'm going to make a</p> <p>24 point of saying something.</p> <p>25 Q. Just so you know, your counsel</p>	<p style="text-align: right;">233</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 there were others besides that, I have to say</p> <p>3 that the chain stores, FMI as a result of</p> <p>4 their activities achieved a milestone in our</p> <p>5 industry that had never been reached before.</p> <p>6 And that was a public, a social public issue</p> <p>7 that we resolved by working together.</p> <p>8 Q. Okay. I'm going to hand you --</p> <p>9 A. And it wouldn't have happened</p> <p>10 without the chain stores. Never would have</p> <p>11 happened.</p> <p>12 - - -</p> <p>13 (Exhibit Pope-20, UEP Animal</p> <p>14 Welfare Committee October 9, 2002</p> <p>15 Savannah, Georgia Minutes, Bates</p> <p>16 UE0153388 - UE0153390, was marked for</p> <p>17 identification.)</p> <p>18 - - -</p> <p>19 BY MR. OLSON:</p> <p>20 Q. I'm going to hand you what's</p> <p>21 been marked Pope-20. If you could just</p> <p>22 identify this for us as the minutes of a UEP</p> <p>23 Animal Welfare Committee meeting from</p> <p>24 October 9, 2002.</p> <p>25 A. Okay.</p>

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<p style="text-align: right;">234</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. You attended this meeting.</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall this meeting?</p> <p>6 A. No.</p> <p>7 Q. If you look at the top of the</p> <p>8 second page there's a heading that says,</p> <p>9 "Requirement for Certified Status." If you</p> <p>10 just review that portion and let me know.</p> <p>11 A. Okay. (Reviewing document.)</p> <p>12 Okay.</p> <p>13 Q. This is the motion to reconfirm</p> <p>14 the commitment of 100 percent of production</p> <p>15 facilities?</p> <p>16 A. Yes. Okay.</p> <p>17 Q. Do you recall the discussion</p> <p>18 about this?</p> <p>19 A. There wouldn't be any way for</p> <p>20 me to say that I don't remember discussing</p> <p>21 100 percent rule, because it was thrown in</p> <p>22 our face meeting after meeting after meeting.</p> <p>23 It got vetted by our committee time and time</p> <p>24 and time again. It got vetted at FMI. It</p> <p>25 got vetted at USDA. They all agreed that you</p>	<p style="text-align: right;">236</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 don't have to, but they should be</p> <p>3 buying from certified producers if</p> <p>4 they're going to sell the eggs for</p> <p>5 them. And those can't run in the</p> <p>6 certified plant.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Let me try it this way: Let's</p> <p>9 say there's a UEP member that has an egg</p> <p>10 production company in the Northeast. And it</p> <p>11 has -- that member has an affiliate, whatever</p> <p>12 exactly that means, that's in the Southeast.</p> <p>13 Maybe it has a different name. Okay?</p> <p>14 A. Yeah.</p> <p>15 Q. Why couldn't the affiliate in</p> <p>16 the Northeast be certified under the program,</p> <p>17 but the affiliate in the Southeast couldn't</p> <p>18 be?</p> <p>19 MS. LEVINE: Object to the form</p> <p>20 of the question. The witness has</p> <p>21 testified he doesn't know what</p> <p>22 affiliate meant.</p> <p>23 MR. OLSON: Please don't testify</p> <p>24 for the witness.</p> <p>25 MS. LEVINE: That's a</p>
<p style="text-align: right;">235</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 have to have 100 percent participation if</p> <p>3 they're going to be a certified producer</p> <p>4 because there's no way possible to follow the</p> <p>5 eggs.</p> <p>6 Q. Well, let me ask you about</p> <p>7 that. This 100 percent rule as it applies</p> <p>8 here, applies to all company affiliates.</p> <p>9 Correct?</p> <p>10 A. If they're selling the product,</p> <p>11 yes, it does.</p> <p>12 Q. So a member of UEP could have</p> <p>13 two different affiliates, for example.</p> <p>14 Correct?</p> <p>15 A. Now, when you say "affiliates,"</p> <p>16 are you talking about a contract producer,</p> <p>17 for example?</p> <p>18 Q. The word "affiliates" is here,</p> <p>19 what does it mean?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question.</p> <p>22 THE WITNESS: Affiliate to me --</p> <p>23 and I can't describe it. I just think</p> <p>24 that if a member was selling certified</p> <p>25 eggs, then they should be buying, they</p>	<p style="text-align: right;">237</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 hypothetical question.</p> <p>3 MR. OLSON: Objection noted.</p> <p>4 Thank you.</p> <p>5 THE WITNESS: Ownership. What</p> <p>6 was the ownership? That would be our</p> <p>7 question.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. One person owns them both.</p> <p>10 A. And he wants to be a certified</p> <p>11 producer in the Northeast, yes.</p> <p>12 Q. But not --</p> <p>13 A. He has got to be a certified</p> <p>14 producer in the Southeast.</p> <p>15 Q. But why?</p> <p>16 A. Because the rule is that --</p> <p>17 you're taking one example where one is in the</p> <p>18 north -- that isn't usually the case. You</p> <p>19 can't commingle the eggs. You lose all our</p> <p>20 credibility if you tell your chain stores or</p> <p>21 you tell FMI that, well, we got a producer</p> <p>22 over here that produces half his eggs are</p> <p>23 certified and the other half are not.</p> <p>24 Q. But I'm not talking about</p> <p>25 commingling, I'm talking about a company that</p>

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<p style="text-align: right;">238</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 has two different locations.</p> <p>3 A. It doesn't make any difference.</p> <p>4 How do I know --</p> <p>5 Q. But they're not commingling.</p> <p>6 A. But I don't know that. It</p> <p>7 loses -- it doesn't have its identity. It</p> <p>8 doesn't say, hey, I'm from Florida and you're</p> <p>9 from wherever, Pennsylvania, so...</p> <p>10 Q. But why couldn't the auditing</p> <p>11 be done on location A and you make sure all</p> <p>12 the eggs are produced in one way and they're</p> <p>13 allowed -- those eggs are allowed to be sold</p> <p>14 as certified and the auditing is done -- and</p> <p>15 the eggs sold from B are not allowed to be</p> <p>16 sold as certified?</p> <p>17 MS. LEVINE: Objection to the</p> <p>18 form of the question. Asked and</p> <p>19 answered. Mischaracterizes and asked</p> <p>20 for a hypo from a fact witness.</p> <p>21 THE WITNESS: I don't know what</p> <p>22 that means. So am I supposed to</p> <p>23 answer or not, I don't know?</p> <p>24 MS. LEVINE: You can answer the</p> <p>25 question if you know the answer.</p>	<p style="text-align: right;">240</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall this discussion</p> <p>3 that all certified companies should attempt</p> <p>4 to only purchase eggs from other certified</p> <p>5 companies?</p> <p>6 A. I remember the discussion. I</p> <p>7 don't remember this particular one, but I</p> <p>8 remember the discussion.</p> <p>9 Q. That was the consensus of the</p> <p>10 UEP members?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question.</p> <p>13 THE WITNESS: Well, you see what</p> <p>14 they decided to do, because you also</p> <p>15 have to consider the free flow of</p> <p>16 product, too. I mean, you know, we</p> <p>17 would like to have everybody in the</p> <p>18 program. Obviously everybody wasn't</p> <p>19 in the program. As you suggested</p> <p>20 earlier, there may be a store in</p> <p>21 Paducah, Kentucky that could care less</p> <p>22 whether they got certified product or</p> <p>23 not, and yet it was a customer of one</p> <p>24 of our certified farms. So we didn't</p> <p>25 say that they couldn't buy eggs. We</p>
<p style="text-align: right;">239</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: There was no</p> <p>3 exceptions. If a producer decided</p> <p>4 that they wanted to be a certified</p> <p>5 company irregardless of where the eggs</p> <p>6 are produced, if he owns that</p> <p>7 production and he markets that</p> <p>8 production, he has got to certify the</p> <p>9 whole thing, period.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Let's look at the heading that</p> <p>12 says, "Selling Non-Certified Eggs."</p> <p>13 A. Yeah.</p> <p>14 Q. If you could just briefly</p> <p>15 review that, please.</p> <p>16 A. Well, that's a good example.</p> <p>17 Q. Have you reviewed it?</p> <p>18 A. Yes.</p> <p>19 Q. Do you see where it says, "The</p> <p>20 consensus was that while all certified</p> <p>21 companies should attempt to only purchase</p> <p>22 eggs from other certified companies..."?</p> <p>23 A. Yes.</p> <p>24 Q. And then it goes on?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">241</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 said that if they bought eggs for</p> <p>3 their customer in Paducah, Kentucky,</p> <p>4 they could buy from a non-certified</p> <p>5 farm so we didn't disrupt the flow of</p> <p>6 product at any time by any</p> <p>7 restrictions.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. At the bottom there's a</p> <p>10 reference to "UEA Further Processor Motion."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So UEA further processors were</p> <p>14 permitted to bring motions to the floor of</p> <p>15 the Producer Committee. Is that right?</p> <p>16 MS. LEVINE: Objection to the</p> <p>17 form of the question.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. If you look to the next page,</p> <p>21 there's a reference to "Monthly Compliance</p> <p>22 Reports."</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what these</p> <p>25 compliance reports are, what that refers to?</p>

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<p style="text-align: right;">242</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. What were the compliance</p> <p>4 reports?</p> <p>5 A. It was our most vital education</p> <p>6 tool because obviously we didn't want members</p> <p>7 failing. And in order to do that, we sent</p> <p>8 monthly compliance reports so that we had</p> <p>9 somebody look at them, not me, I don't think</p> <p>10 I've ever seen a completed one come back</p> <p>11 quite frankly, but we did that so that we</p> <p>12 could encourage the producers if they were</p> <p>13 failing on one of those provisions, that we</p> <p>14 get it early and we get it before the</p> <p>15 auditors come in and do their, you know,</p> <p>16 their audit of the facility for that year.</p> <p>17 And it had to be done every year, and they</p> <p>18 paid for it. So if our auditor came in and</p> <p>19 they didn't pass, they had a short amount of</p> <p>20 time to correct it, but when they came back,</p> <p>21 they had to pay for a second audit, of</p> <p>22 course. So we thought the best thing to do</p> <p>23 was to educate our people and we, in the</p> <p>24 compliance report -- again, like I said, I</p> <p>25 didn't see it or I don't remember, but it</p>	<p style="text-align: right;">244</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 strictly --</p> <p>3 A. Yes.</p> <p>4 Q. -- that no deviation was</p> <p>5 allowed?</p> <p>6 A. They failed it if they didn't</p> <p>7 meet it.</p> <p>8 Q. And those were the only two</p> <p>9 provisions that were like that?</p> <p>10 A. Yes.</p> <p>11 MS. LEVINE: Mr. Pope, you have</p> <p>12 got to wait until the questioner</p> <p>13 finishes the question. The transcript</p> <p>14 will not be the clear. There's not</p> <p>15 enough time to make an objection. And</p> <p>16 you really do have to wait. It's not</p> <p>17 a conversation. It's a question and</p> <p>18 an answer.</p> <p>19 - - -</p> <p>20 (Exhibit Pope-21, 1/11/03</p> <p>21 Memorandum, Bates UE0158940 -</p> <p>22 EU0158942, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">243</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 basically contained those provisions that</p> <p>3 were in the guidelines.</p> <p>4 Q. And is it your understanding</p> <p>5 that at this time companies were sent a</p> <p>6 letter by UEP if they were even one bird over</p> <p>7 the allowable limit?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question.</p> <p>10 THE WITNESS: Pretty tight</p> <p>11 program.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. In that regard it is.</p> <p>14 A. Yeah.</p> <p>15 Q. Were there any other provisions</p> <p>16 of the program where even tiny variations --</p> <p>17 A. I'm going to say the only one I</p> <p>18 can think of is backfill.</p> <p>19 Q. At this time?</p> <p>20 A. I don't even know if it was on</p> <p>21 there at this time. It may not have been.</p> <p>22 Early on it wasn't.</p> <p>23 Q. So to the best of your</p> <p>24 recollection, the bird limit and the</p> <p>25 backfilling rule were enforced very</p>	<p style="text-align: right;">245</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'll hand you what's been</p> <p>3 marked Pope-21.</p> <p>4 MR. OLSON: Is that what it is,</p> <p>5 21?</p> <p>6 MS. LEVINE: Yes.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. This is a document Bates</p> <p>9 stamped UE0158940 through 942. Please</p> <p>10 familiarize yourself with the document and</p> <p>11 let us know when you're done.</p> <p>12 A. (Reviewing document.)</p> <p>13 Okay.</p> <p>14 Q. Can you identify this as a</p> <p>15 memorandum you, Mr. Gregory and others</p> <p>16 received on or about January 11, 2003?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recall receiving</p> <p>19 this?</p> <p>20 A. No.</p> <p>21 Q. Do you recall generally these</p> <p>22 issues being raised by UEP members?</p> <p>23 A. Yes, again, but you've taken</p> <p>24 the names off who were on here, so I don't</p> <p>25 know who was on here. I don't care.</p>

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<p style="text-align: right;">246</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. I don't think you're accusing</p> <p>3 me of anything, I didn't take any names off.</p> <p>4 A. I know. And I don't care.</p> <p>5 Q. But you recall these issues</p> <p>6 being raised?</p> <p>7 A. Yes.</p> <p>8 Q. I just want to see if I</p> <p>9 understand the issues that were raised. So</p> <p>10 let's look at where it says, "Problem No. 1:</p> <p>11 'The 100% Rule.'" You've read what's</p> <p>12 underneath that.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Do you see the reference to</p> <p>15 "Imposing a 100% rule will have the effect of</p> <p>16 commoditizing the market and, thus,</p> <p>17 increasing the difficulty of differentiating</p> <p>18 and capturing higher margins, especially for</p> <p>19 smaller producers"?</p> <p>20 A. That is their opinion, yeah.</p> <p>21 Q. Did you have an understanding</p> <p>22 of what that concern was for those of us who</p> <p>23 don't understand exactly what that refers to?</p> <p>24 Let me try it this way: What was your</p> <p>25 concern of the -- what was your understanding</p>	<p style="text-align: right;">248</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 understood it?</p> <p>3 A. Well, when you say that word --</p> <p>4 Q. Which word?</p> <p>5 A. Commoditize or whatever that</p> <p>6 word was.</p> <p>7 Q. I'm not -- that's a word in the</p> <p>8 document that you received.</p> <p>9 A. Yeah.</p> <p>10 Q. My question is, what did you</p> <p>11 understand the concern to be?</p> <p>12 MS. LEVINE: Objection to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: I don't know.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. You didn't understand the</p> <p>17 concern?</p> <p>18 A. No.</p> <p>19 MS. LEVINE: Objection to the</p> <p>20 form of the question. Objection to</p> <p>21 mischaracterizing the witness'</p> <p>22 testimony.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. So underneath that, now talking</p> <p>25 about the procedures, which is the second</p>
<p style="text-align: right;">247</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of the concern being raised here?</p> <p>3 MS. LEVINE: Objection to the</p> <p>4 form of the question.</p> <p>5 THE WITNESS: Well, there's</p> <p>6 two -- there's a couple of ways of</p> <p>7 looking at it. We wanted a credible</p> <p>8 program. When I say "we," I'm talking</p> <p>9 about producer. I'm not talking about</p> <p>10 Al Pope here. This issue now has been</p> <p>11 brought up in a very Democratic way</p> <p>12 about a half a dozen times at least</p> <p>13 with me sitting down with these people</p> <p>14 at breakfast at least four times. And</p> <p>15 each time it's the same issue and each</p> <p>16 time I answer it the same way. You</p> <p>17 don't like it, take it to the UEP</p> <p>18 board, take it to the Animal Welfare</p> <p>19 Committee, you know.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. We'll get to the process, but</p> <p>22 my question is really to understand what</p> <p>23 concern was expressed to you when they --</p> <p>24 this concern about commoditizing the market,</p> <p>25 what was the concern that they had, as you</p>	<p style="text-align: right;">249</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 issue raised here.</p> <p>3 A. Okay.</p> <p>4 Q. The authors of this memorandum</p> <p>5 say, "In January 2002, the UEP Board debated</p> <p>6 implementation of the proposed guidelines.</p> <p>7 Agreement could not be reached on the 100%</p> <p>8 rule."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Is that consistent with your</p> <p>12 knowledge?</p> <p>13 A. Yes.</p> <p>14 Q. And it says there was</p> <p>15 discussion about it. And then if you turn</p> <p>16 the page, at the top it says, "A motion was</p> <p>17 made at the January 2002 meeting, and</p> <p>18 approved, that prior to initiation of the</p> <p>19 guidelines, producers would survey</p> <p>20 customers."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall a decision being</p> <p>24 made to survey customers?</p> <p>25 MS. LEVINE: Objection to the</p>

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<p style="text-align: right;">250</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 form of the question.</p> <p>3 THE WITNESS: Well, the answer</p> <p>4 is no, but it would be against our</p> <p>5 policy to do it anyhow.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Against what policy?</p> <p>8 A. To the extent possible, we</p> <p>9 never -- it was a standing rule in our office</p> <p>10 that we did not contact customers, a</p> <p>11 producer's customers. First all, we didn't</p> <p>12 know which producer it was. And unless a</p> <p>13 producer asked us to do that, we wouldn't</p> <p>14 take the initiative and send it to customers.</p> <p>15 Q. Does UEP have formal policies</p> <p>16 that reflect the type of policy that you just</p> <p>17 mentioned?</p> <p>18 A. No.</p> <p>19 Q. Does UEP have policies that</p> <p>20 relate to antitrust compliance?</p> <p>21 A. No.</p> <p>22 Q. Written policies?</p> <p>23 A. No.</p> <p>24 Q. My very specific question now</p> <p>25 is, do you recall a motion regarding</p>	<p style="text-align: right;">252</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 with cage space recommendations as going into</p> <p>3 effect immediately."</p> <p>4 Do you see that?</p> <p>5 A. To effect the what?</p> <p>6 Q. "...into effect immediately."</p> <p>7 A. Oh, okay.</p> <p>8 Q. Do you know what that's</p> <p>9 referring to?</p> <p>10 MS. LEVINE: Objection to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. If you looked at the bottom</p> <p>15 there's a heading that says, "Problem No. 3 -</p> <p>16 The Audit Process."</p> <p>17 A. Okay.</p> <p>18 Q. Have you reviewed that?</p> <p>19 A. Yes.</p> <p>20 Q. So this number 1 makes this</p> <p>21 point that, it says, "A Producer can fail</p> <p>22 significant portions of the beak trimming,</p> <p>23 handling, transportation, slaughter and</p> <p>24 molting portions of the audit and still</p> <p>25 receive a passing score."</p>
<p style="text-align: right;">251</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 conducting a survey of customers about how</p> <p>3 many of them required an Animal Welfare</p> <p>4 Program?</p> <p>5 MS. LEVINE: Objection. Asked</p> <p>6 and answered.</p> <p>7 THE WITNESS: Let me hear the</p> <p>8 question again.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. Do you recall whether that</p> <p>11 happened or not?</p> <p>12 A. The question again, just read</p> <p>13 it from the beginning.</p> <p>14 Q. Do you recall a motion being</p> <p>15 raised regarding conducting a survey of UEP's</p> <p>16 customers?</p> <p>17 A. We didn't do a survey of our</p> <p>18 customers.</p> <p>19 Q. Do you recall the motion being</p> <p>20 made?</p> <p>21 A. I don't recall the motion.</p> <p>22 Q. This letter says that "...in</p> <p>23 April 2002, via conference call, the Board</p> <p>24 evidently overrode the motion and advised by</p> <p>25 faxed memo UEP members of 100% compliance</p>	<p style="text-align: right;">253</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And that's true. Correct?</p> <p>5 A. Uh-huh.</p> <p>6 Q. That was a yes?</p> <p>7 A. Yes.</p> <p>8 Q. It says, "Thus, the audit</p> <p>9 program could be construed to be unconcerned</p> <p>10 whether a producer is humanely</p> <p>11 handling/molting and beak trimming layers."</p> <p>12 Do you see that? Do you see</p> <p>13 those words?</p> <p>14 A. I don't interpret it that way.</p> <p>15 Q. But do you recall that being</p> <p>16 raised, that issue being raised?</p> <p>17 MS. LEVINE: Object to the form</p> <p>18 of the -- object to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: I just don't know.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Fair enough. You can put that</p> <p>23 aside.</p> <p>24 - - -</p> <p>25 (Exhibit Pope-22, 1/17/03 Memo,</p>

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<p style="text-align: right;">254</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Bates UE0834380 &amp; UE0834381, was</p> <p>3 marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. OLSON:</p> <p>6 Q. I've handed you what we've</p> <p>7 marked Pope-22. This is a document Bates</p> <p>8 stamped UE0834380 through 381. Please let me</p> <p>9 know when you've had a chance to review it.</p> <p>10 A. (Reviewing document.)</p> <p>11 Okay.</p> <p>12 Q. Can you identified this as a</p> <p>13 memo from Sparboe Farms that was sent to you</p> <p>14 and others on January 17, 2003?</p> <p>15 A. Yes.</p> <p>16 Q. Now, it's addressed to Gene,</p> <p>17 Mike, Paul, Al and Irving. I assume Al is</p> <p>18 you. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Irving is Irving Isaacson?</p> <p>21 A. Yes.</p> <p>22 Q. Gene is Gene Gregory?</p> <p>23 A. Right.</p> <p>24 Q. Do you know who Paul is?</p> <p>25 A. I think Paul Bahan was a member</p>	<p style="text-align: right;">256</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Fair enough. Do you recall</p> <p>3 receiving this document?</p> <p>4 A. No.</p> <p>5 Q. But I take it you recall</p> <p>6 Sparboe Farms raising some issues --</p> <p>7 A. Yes.</p> <p>8 Q. -- about the program at this</p> <p>9 time. Right?</p> <p>10 A. Yeah. And good ones, yeah.</p> <p>11 Q. One of the issues being raised</p> <p>12 here is that the program has been forged and</p> <p>13 debated over time and reflects some</p> <p>14 compromises that have been made. Correct?</p> <p>15 A. The compromises that were made</p> <p>16 were made on the procedure of how they</p> <p>17 handled the transition period. If there was</p> <p>18 any compromising -- well, we didn't have any</p> <p>19 compromising with the Scientific Advisory</p> <p>20 Committee. As far as we were concerned,</p> <p>21 their rule was law, whatever they came up</p> <p>22 with.</p> <p>23 Q. This document says that the</p> <p>24 Scientific Committee made two enormous</p> <p>25 compromises. Do you see that?</p>
<p style="text-align: right;">255</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of the Animal Welfare Committee at that time.</p> <p>3 Q. And do you -- how would you</p> <p>4 characterize his involvement with the program</p> <p>5 at this time? Did he have any principal</p> <p>6 responsibility?</p> <p>7 A. Well, the definition of a</p> <p>8 responsibility, Paul, like Garth and like</p> <p>9 Mike, they had a responsibility to examine</p> <p>10 the guidelines, and if they saw areas that</p> <p>11 needed discussion, they would refer them,</p> <p>12 with their opinion maybe even, to the Animal</p> <p>13 Welfare Committee, the UEP Animal Welfare</p> <p>14 Committee and then the Animal Welfare</p> <p>15 Committee would decide is this an</p> <p>16 administrative issue that the producers</p> <p>17 should do or is it a guideline issue that has</p> <p>18 to go back to the Scientific Advisory</p> <p>19 Committee. So that's the way it would</p> <p>20 normally be handled.</p> <p>21 Q. When you say "Mike," who is</p> <p>22 that is?</p> <p>23 A. I would be guessing, but I</p> <p>24 would say that would be Mike Bynum from Tampa</p> <p>25 Farm Services. Just guessing at it.</p>	<p style="text-align: right;">257</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know what they meant by</p> <p>3 that.</p> <p>4 Q. Do you see where it says that?</p> <p>5 A. Yes.</p> <p>6 Q. It says that the first thing</p> <p>7 they meant was that the initial goal was</p> <p>8 72 inches per bird. Is that consistent with</p> <p>9 your knowledge?</p> <p>10 A. I don't recall.</p> <p>11 Q. You're just not sure one way or</p> <p>12 the other?</p> <p>13 A. I just don't know. I'd like to</p> <p>14 explain one of these because it does mention</p> <p>15 it somewhere else, too. And this is the room</p> <p>16 for the birds to stand up.</p> <p>17 Q. Yeah, did the program require</p> <p>18 that birds were allowed to stand up without</p> <p>19 bending over?</p> <p>20 A. Yeah. And -- but let me just</p> <p>21 explain how that works. The cages were --</p> <p>22 some, I say some of the cages, that was one</p> <p>23 of the big dilemmas was we had all these</p> <p>24 different size cages out there, but we had</p> <p>25 one that was called a slant back. What would</p>

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<p style="text-align: right;">258</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 happen is the cage was tall in the front</p> <p>3 where they could stand up, walk around and,</p> <p>4 you know, whatever, look at the feed or eat</p> <p>5 feed or whatever it is. And then it slanted</p> <p>6 back to the back where it was not even</p> <p>7 practical, they couldn't stand up. But it</p> <p>8 was a place where they went back and nested.</p> <p>9 They'd go back there in a little solitude and</p> <p>10 lay their eggs or something.</p> <p>11 Q. But if an auditor went to a</p> <p>12 farm and found that not all the hens could</p> <p>13 even stand comfortably upright within the</p> <p>14 cage, the farm might lose some points, but it</p> <p>15 wouldn't fail the audit, would it?</p> <p>16 A. Well, I just can't answer. You</p> <p>17 should ask the USDA. Because I don't even</p> <p>18 know if they -- I just don't know the answer</p> <p>19 to that.</p> <p>20 Q. Do you recall what the</p> <p>21 Scientific Committee said was the minimum</p> <p>22 feeder space that each hen should be</p> <p>23 allotted?</p> <p>24 A. I don't recall.</p> <p>25 MS. LEVINE: Steve, when you're</p>	<p style="text-align: right;">260</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 what's been marked Pope-23. This is a</p> <p>3 document Bates stamped UE0153366 through 68.</p> <p>4 Can you identify this document as a minutes</p> <p>5 of an Animal Welfare Committee meeting from</p> <p>6 January 21, 2003, in Atlanta, Georgia?</p> <p>7 A. Yes.</p> <p>8 Q. You attended this meeting.</p> <p>9 Correct?</p> <p>10 A. I was -- again, I was there for</p> <p>11 some of it. I wouldn't remember being there</p> <p>12 for all of it, because I made it a point of</p> <p>13 not being there for all of it.</p> <p>14 Q. At this meeting in particular</p> <p>15 or at meetings in general?</p> <p>16 A. Meetings in general, because we</p> <p>17 had -- my responsibilities were government</p> <p>18 relations more. So when we had to -- I</p> <p>19 didn't leave the Government Relations</p> <p>20 Committee meeting until they were done going</p> <p>21 through their agenda. If they got through</p> <p>22 their agenda before marketing finished, which</p> <p>23 was almost always the case, I'd go in for the</p> <p>24 last hour or so.</p> <p>25 Q. So you definitely attended some</p>
<p style="text-align: right;">259</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 at a good breaking point, we've been</p> <p>3 going an hour and 15 minutes.</p> <p>4 MR. OLSON: We can take a break</p> <p>5 now.</p> <p>6 MS. LEVINE: Okay. Let's take a</p> <p>7 little break.</p> <p>8 VIDEOGRAPHER: Time is</p> <p>9 approximately 2:14 p.m. This is the</p> <p>10 end of tape three. We're now off the</p> <p>11 record.</p> <p>12 - - -</p> <p>13 (A recess was taken.)</p> <p>14 - - -</p> <p>15 (Exhibit Pope-23, Animal Welfare</p> <p>16 Committee Meeting January 21, 2003</p> <p>17 Atlanta, Ga. Minutes, Bates UE0153366</p> <p>18 - UE0153368, was marked for</p> <p>19 identification.)</p> <p>20 - - -</p> <p>21 VIDEOGRAPHER: The time is</p> <p>22 approximately 2:27 p.m. This begins</p> <p>23 tape four. We are back on the record.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Mr. Pope, I've handed you</p>	<p style="text-align: right;">261</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 portion of this meeting. Correct?</p> <p>3 A. Yeah, uh-huh.</p> <p>4 Q. You're not certain whether you</p> <p>5 attended all of it?</p> <p>6 A. Right.</p> <p>7 Q. But to the extent you attended</p> <p>8 some portion, which you did, it would have</p> <p>9 been, likely would have been the last hour or</p> <p>10 so. Is that your testimony?</p> <p>11 A. Yes, uh-huh.</p> <p>12 Q. I just have a couple of</p> <p>13 questions on it. At the bottom of the second</p> <p>14 page there's a heading that says, "Challenge</p> <p>15 to 100% Policy Co-mingling," if you could</p> <p>16 just briefly review what's under there.</p> <p>17 A. Okay.</p> <p>18 Q. Why don't you review from there</p> <p>19 to the end of the document. Let us know when</p> <p>20 you're done, please.</p> <p>21 A. (Reviewing document.)</p> <p>22 Okay.</p> <p>23 Q. So this generally concerns this</p> <p>24 concern raised by Garth Sparboe about the 100</p> <p>25 percent rule. Right?</p>

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<p style="text-align: right;">262</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. And the backfill, yes.</p> <p>3 Q. But, yeah, just starting the</p> <p>4 first thing that comes up here is the</p> <p>5 100 percent rule?</p> <p>6 A. Yeah.</p> <p>7 Q. There's a reference to a</p> <p>8 conference call with Paul -- is it Bahan?</p> <p>9 A. Yes.</p> <p>10 Q. -- Mr. Isaacson, you and Mr.</p> <p>11 Gregory on January 17th. Do you recall that</p> <p>12 conference call?</p> <p>13 A. Not really. I mean, I'm sure</p> <p>14 they had it, but I don't -- where is that on</p> <p>15 here?</p> <p>16 Q. At the bottom of that page we</p> <p>17 were looking at.</p> <p>18 A. Page 2. Oh, yeah. Okay. I</p> <p>19 see it there.</p> <p>20 Q. But you don't recall the --</p> <p>21 A. Okay.</p> <p>22 Q. The question just is whether</p> <p>23 you recall what was discussed?</p> <p>24 A. Yes, okay.</p> <p>25 Q. If you recall what was</p>	<p style="text-align: right;">264</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And what was the substance of</p> <p>4 the discussion? What do you recall?</p> <p>5 A. We were trying to respond to</p> <p>6 those producers that were concerned about</p> <p>7 those two provisions. And for the third or</p> <p>8 fourth time, and we responded to each and</p> <p>9 every one. And this time, they had a little</p> <p>10 different smoke on it, so -- but UEP is owned</p> <p>11 by them, so we're going to do what they ask</p> <p>12 us to do. And they want us to form a small</p> <p>13 committee to see if there was anything that</p> <p>14 they -- they couldn't adopt anything. The</p> <p>15 only thing they could do is either recommend</p> <p>16 to the Producer Committee who, in turn, had</p> <p>17 to recommend it to the Scientific Advisory</p> <p>18 Committee if there was any change.</p> <p>19 Q. Just to be clear, when you say</p> <p>20 they couldn't do anything --</p> <p>21 A. No.</p> <p>22 Q. -- who are you referring to,</p> <p>23 who is the "they"? Is it the small group?</p> <p>24 A. Both of these. Both of these.</p> <p>25 The small group and the Animal Welfare</p>
<p style="text-align: right;">263</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 discussed on the conference call, do you?</p> <p>3 A. Yes.</p> <p>4 Q. You do recall what was</p> <p>5 discussed?</p> <p>6 A. Yes.</p> <p>7 Q. What was discussed --</p> <p>8 MS. LEVINE: I'm going to object</p> <p>9 on the grounds of privilege, unless</p> <p>10 you can show me a document to make a</p> <p>11 foundation. If this discussion was</p> <p>12 done in a non-privileged way, you can</p> <p>13 certainly ask the question, but based</p> <p>14 on this document, we just really don't</p> <p>15 know.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Well, do you recall anyone</p> <p>18 asking for legal advice on that conference</p> <p>19 call, yes or no?</p> <p>20 A. No.</p> <p>21 Q. So do you recall what was</p> <p>22 discussed at that conference call?</p> <p>23 A. These two issues.</p> <p>24 Q. Both the 100 percent policy and</p> <p>25 commingling?</p>	<p style="text-align: right;">265</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Committee. I mean the small group is always</p> <p>3 just an ad hoc committee, if they had an</p> <p>4 issue they want to discuss and see if the</p> <p>5 guys up there wanted to see if there was some</p> <p>6 way, some different way of handling. We</p> <p>7 would have liked to have another way, we</p> <p>8 really would.</p> <p>9 Q. When you say this time they had</p> <p>10 a little different smoke on it, what are you</p> <p>11 referring to?</p> <p>12 A. Well, it's always -- you know</p> <p>13 what I mean, they'll get -- each time they</p> <p>14 come in, just like I do with the board, every</p> <p>15 time if I had something that I really wanted</p> <p>16 them to take a serious look at, I would come</p> <p>17 in with the program, and, of course, they'd</p> <p>18 turn me down. So I'd go back and I'd -- you</p> <p>19 know, a month later I'd go through it again</p> <p>20 and I'd dress it up a little bit, and I'd</p> <p>21 bring it back to the board and they'd turn me</p> <p>22 down again.</p> <p>23 Q. So do you recall what the</p> <p>24 different smoke they had on it?</p> <p>25 A. No, I don't know.</p>

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<p style="text-align: right;">266</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. So if you look back at the</p> <p>3 minutes, it indicates that the last item</p> <p>4 discussed was the issue about the "Backfill</p> <p>5 of Layer Houses." Correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any expertise in</p> <p>8 backfilling?</p> <p>9 A. No.</p> <p>10 Q. You've never been an egg</p> <p>11 producer?</p> <p>12 A. No.</p> <p>13 Q. The minutes indicate that there</p> <p>14 was a discussion about whether backfilling</p> <p>15 was allowed. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Gene Gregory reports that it</p> <p>18 was allowed. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then Mr. Gregory asked if</p> <p>21 anyone wanted to speak to changing the</p> <p>22 policy. Right?</p> <p>23 A. Yes.</p> <p>24 Q. And no one did. Correct?</p> <p>25 MS. LEVINE: Objection to the</p>	<p style="text-align: right;">268</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 marked Pope-24. This is a document Bates</p> <p>3 stamped UE0146198. I'll ask if you can</p> <p>4 identify it -- well, why don't you let us</p> <p>5 know when you've reviewed it.</p> <p>6 A. (Reviewing document.)</p> <p>7 Okay. I -- well, I don't know</p> <p>8 that I ever even saw this letter.</p> <p>9 Q. Is that your handwriting there</p> <p>10 at the top?</p> <p>11 A. Well --</p> <p>12 Q. Strike that. Let's back up.</p> <p>13 Can you identify it as a letter</p> <p>14 that was addressed to you on February 7,</p> <p>15 2003?</p> <p>16 A. Yes.</p> <p>17 Q. From a Matthew Kwasek at Valley</p> <p>18 Fresh?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know Mr. Kwasek?</p> <p>21 A. No.</p> <p>22 Q. Is that your handwriting there?</p> <p>23 A. You know, it's a little</p> <p>24 confusing. Maybe I can ask, is there</p> <p>25 somebody here from Nulaid?</p>
<p style="text-align: right;">267</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 form of the --</p> <p>3 THE WITNESS: I don't remember</p> <p>4 that. I just don't remember it.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Do you see where it says,</p> <p>7 "There was no recommendation for change"?</p> <p>8 A. Yes.</p> <p>9 Q. Is that consistent with your</p> <p>10 knowledge?</p> <p>11 MS. LEVINE: Objection to the</p> <p>12 form of the question.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. And you certainly didn't make</p> <p>16 any recommendation for a change?</p> <p>17 A. No.</p> <p>18 Q. You can put that aside.</p> <p>19 - - -</p> <p>20 (Exhibit Pope-24, 2/7/03 Letter,</p> <p>21 Bates UE0146198, was marked for</p> <p>22 identification.)</p> <p>23 - - -</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Let me hand you what's been</p>	<p style="text-align: right;">269</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Well, we really can't engage in</p> <p>3 dialogue with other folks.</p> <p>4 A. Because Matt Kwasek, as far as</p> <p>5 I know, there was actually two different --</p> <p>6 Valley Fresh is in California. It sounds in</p> <p>7 this letter like they only follow processing</p> <p>8 plant. And I'm guessing at that, because</p> <p>9 that's what he's asking about.</p> <p>10 MS. LEVINE: Mr. Pope, we don't</p> <p>11 want you to guess at a question.</p> <p>12 Nobody wants you to guess.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Take it step by step. Is that</p> <p>15 your handwriting at the top, it says, "Chad"?</p> <p>16 A. No.</p> <p>17 Q. You don't recall receiving this</p> <p>18 letter?</p> <p>19 A. No.</p> <p>20 Q. Do you recall whether Valley</p> <p>21 Fresh was a member of the certified program</p> <p>22 at this time?</p> <p>23 A. Valley Fresh the egg producer</p> <p>24 was a certified program. Valley Fresh the</p> <p>25 processing plant, from a corporate structure,</p>

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<p style="text-align: right;">270</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 I don't even know how they were structured.</p> <p>3 I mean, I don't even know if they were the</p> <p>4 same company.</p> <p>5 Q. But it wouldn't matter. Right?</p> <p>6 MS. LEVINE: Objection to the</p> <p>7 form of the question.</p> <p>8 THE WITNESS: To the extent that</p> <p>9 we respond to requests like this, we</p> <p>10 would respond to it whether it's a</p> <p>11 member or a nonmember. We want</p> <p>12 everybody to be aware, and we would</p> <p>13 try to answer this to the best of our</p> <p>14 ability, but we didn't have an answer.</p> <p>15 BY MR. OLSON:</p> <p>16 Q. You can put that aside.</p> <p>17 - - -</p> <p>18 (Exhibit Pope-25, United Voices</p> <p>19 dated February 27, 2003, Bates</p> <p>20 UE0135552 - UE0134556, was marked for</p> <p>21 identification.)</p> <p>22 - - -</p> <p>23 BY MR. OLSON:</p> <p>24 Q. Let me hand you what's been</p> <p>25 marked Pope-25. This is a document Bates</p>	<p style="text-align: right;">272</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: As I understand</p> <p>3 it, yes.</p> <p>4 BY MR. OLSON:</p> <p>5 Q. And this reflects that that</p> <p>6 proposal was rejected. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. Is that consistent with your</p> <p>9 knowledge?</p> <p>10 A. Yes.</p> <p>11 Q. If you turn to page 3. And</p> <p>12 I'll note that page 2 was repeated in the</p> <p>13 document as we received it. So if you get to</p> <p>14 the one that says page 3 at the bottom. And</p> <p>15 why don't you review page 3 and let me know</p> <p>16 when you're done, please.</p> <p>17 A. This is the one with "Egg</p> <p>18 Market Better Than A Year Ago"?</p> <p>19 Q. Yes. And at the top it says</p> <p>20 "UEP Thanks USEM Members." If you review</p> <p>21 those two sections, please.</p> <p>22 A. (Reviewing document.)</p> <p>23 Okay.</p> <p>24 Q. So starting at the top with the</p> <p>25 USEM discussion, this identifies 61 companies</p>
<p style="text-align: right;">271</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 stamped UE0135552 through 556. And it --</p> <p>3 I'll ask if you can identify this as United</p> <p>4 Voices dated February 27, 2003?</p> <p>5 A. Okay.</p> <p>6 Q. Is that what it is?</p> <p>7 A. Just the first paragraph?</p> <p>8 Q. Just to identify the document,</p> <p>9 It's United --</p> <p>10 A. Yeah, it's -- yeah. Uh-huh.</p> <p>11 Q. United Voices from February 27,</p> <p>12 2003?</p> <p>13 A. Yes.</p> <p>14 Q. All right. The first</p> <p>15 paragraph, the first section reflects this</p> <p>16 discussion about the 100 percent rule.</p> <p>17 Right?</p> <p>18 A. Yes.</p> <p>19 Q. And it reflects that there was</p> <p>20 a proposal by this group who wanted to change</p> <p>21 the rule that would exempt the space</p> <p>22 allowance for eggs marketed to the further</p> <p>23 processed market. Correct?</p> <p>24 MS. LEVINE: Objection to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">273</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that were USEM members. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "These 61 companies</p> <p>5 understand the impact and export, at the</p> <p>6 right time and the right number of loads, can</p> <p>7 benefit the industry."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. How could the -- an export by</p> <p>11 these companies benefit the industry?</p> <p>12 MS. LEVINE: Objection to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: To the extent they</p> <p>15 exported, they would reduce the</p> <p>16 domestic spending, supply.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. How would that benefit the</p> <p>19 industry?</p> <p>20 A. Well, as any traditional</p> <p>21 commodity, when you're short a supply, it</p> <p>22 tends to firm up the price, not necessarily</p> <p>23 above the cost of production, but at least it</p> <p>24 firms it up.</p> <p>25 Q. It continues, it says, "They</p>

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<p style="text-align: right;">274</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 are so committed to USEM and exporting that</p> <p>3 they are willing to pay their share even</p> <p>4 though non-members benefit without</p> <p>5 contributing."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What does that mean, "...they</p> <p>9 are willing..."</p> <p>10 A. Well, I don't --</p> <p>11 MS. LEVINE: Objection to the</p> <p>12 form of the question.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. "...to pay their share..."?</p> <p>15 A. You know, you can ask some</p> <p>16 follow-up questions and I'll be glad to try</p> <p>17 to answer that. It is a little bit</p> <p>18 confusing. For example, I am a producer in</p> <p>19 Seattle, Washington. I think it's a good</p> <p>20 idea to take an export order. But if we have</p> <p>21 him from Seattle, Washington run his truck</p> <p>22 down to Savannah, his cost is going to be</p> <p>23 enormous. So he says so to UEP or USEM, can</p> <p>24 you buy the eggs from somebody that has maybe</p> <p>25 a surplus of eggs at this time and I'll buy</p>	<p style="text-align: right;">276</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 have an open market that you can buy and sell</p> <p>3 eggs every day, and you do the best you can</p> <p>4 by buying me my confirmed load of large eggs.</p> <p>5 Okay. So, okay, in our office we end up --</p> <p>6 let's say we finally get a load of eggs that</p> <p>7 we can buy from whoever, it could be another</p> <p>8 member, that's what we tried to do, but it</p> <p>9 was just important to fill the order. So</p> <p>10 many people participated in that part. So we</p> <p>11 would buy eggs from any number of our</p> <p>12 producers. And let's say that was at \$0.60.</p> <p>13 So the producer in Washington, not UEP and</p> <p>14 not anybody else, carried the burden of any</p> <p>15 shortage. Individual producer. And that was</p> <p>16 his decision. That's what he wanted to do</p> <p>17 and that's what he instructed us to do.</p> <p>18 Q. So pay their share essentially</p> <p>19 means that the order could be filled so that</p> <p>20 they're selling their eggs at a loss?</p> <p>21 MS. LEVINE: Objection to the</p> <p>22 form of the question.</p> <p>23 Mischaracterizes the witness.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Is that one of the things --</p>
<p style="text-align: right;">275</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 them from him and take my commitment from him</p> <p>3 and take it down to the export order. So we</p> <p>4 would buy the eggs for that producer to help</p> <p>5 fill the export order that he committed to.</p> <p>6 And when you're dealing in a product and</p> <p>7 taking it across the United States, a big</p> <p>8 factor, of course, is transportation. And so</p> <p>9 by doing that, we reduce the overall cost to</p> <p>10 fill an export order.</p> <p>11 Q. You're saying by USEM doing</p> <p>12 that?</p> <p>13 A. USEM. And we were a -- we were</p> <p>14 just a -- cooperating with the X order. We</p> <p>15 didn't take title of it. We didn't do</p> <p>16 anything with it. We didn't know what the</p> <p>17 sale price was, we didn't know any of that.</p> <p>18 All we knew is that they would tell us how</p> <p>19 much they could pay for the eggs. Okay.</p> <p>20 Now, if it was an export order, let's just</p> <p>21 say that eggs sold at \$0.50, we sold the</p> <p>22 export order at \$0.50. Okay. The guy in</p> <p>23 Washington is going to pay that much just to</p> <p>24 bring them down from Washington. So he says</p> <p>25 to UEP, you go out in the open market, we</p>	<p style="text-align: right;">277</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. I wouldn't --</p> <p>3 Q. Is that one thing it means?</p> <p>4 A. I really wouldn't know that. I</p> <p>5 don't know what their cost is. I have no</p> <p>6 idea. Is it a cost in relationship to the</p> <p>7 domestic market? Maybe. I don't know. It's</p> <p>8 just one of those things, again, where we</p> <p>9 continue to give our members as many options</p> <p>10 as we think would help them.</p> <p>11 Q. Okay. You can put that aside.</p> <p>12 - - -</p> <p>13 (Exhibit Pope-26, U.S.</p> <p>14 Economic/Animal Welfare Outlook, Bates</p> <p>15 UE0427776 &amp; UE0427777, was marked for</p> <p>16 identification.)</p> <p>17 - - -</p> <p>18 BY MR. OLSON:</p> <p>19 Q. Let me hand you what's been</p> <p>20 marked Pope-26. This is a document Bates</p> <p>21 stamped UE0427776 through 7777. Why don't</p> <p>22 you review the document and then identify it</p> <p>23 for us, please.</p> <p>24 A. (Reviewing document.)</p> <p>25 Okay.</p>

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<p style="text-align: right;">278</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you identify this as a</p> <p>3 document you prepared in April of 2003</p> <p>4 titled, "U.S. Economic/Animal Welfare</p> <p>5 Outlook"?</p> <p>6 A. Yes. And it was prepared for</p> <p>7 the International Egg Commission.</p> <p>8 Q. And you were a member of that</p> <p>9 commission. Is that right?</p> <p>10 A. I was a member -- yes, I was a</p> <p>11 member and chairman.</p> <p>12 Q. You were chairman of the</p> <p>13 commission?</p> <p>14 A. I don't know if I was chairman</p> <p>15 during this period of time. I don't</p> <p>16 remember.</p> <p>17 Q. But at some point you were?</p> <p>18 A. Yeah.</p> <p>19 Q. Would you go to meetings of</p> <p>20 that commission?</p> <p>21 A. Yes.</p> <p>22 Q. And sometimes you would report</p> <p>23 on issues affecting the U.S. egg industry?</p> <p>24 A. All 45 members of the IEC would</p> <p>25 do country reviews. So whatever was the hot</p>	<p style="text-align: right;">280</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 document. Correct?</p> <p>3 A. Pardon?</p> <p>4 Q. You authored this document.</p> <p>5 Correct?</p> <p>6 A. I authored this document, but</p> <p>7 understand that under certain areas obviously</p> <p>8 ones that I didn't work on all the time, I</p> <p>9 either got from Gene or Chad or whatever.</p> <p>10 Q. Others at UEP gave input to</p> <p>11 you?</p> <p>12 A. Yes. I'd ask them. I'd ask</p> <p>13 them what they wanted to include.</p> <p>14 Q. So under the heading here</p> <p>15 "Industry Economics." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Could you read the first</p> <p>18 sentence of that passage under that into the</p> <p>19 record, please?</p> <p>20 A. You want me to read it out</p> <p>21 loud, is that what you're asking me?</p> <p>22 Q. Yes.</p> <p>23 A. "Obviously, the Animal Care</p> <p>24 Program has and will continue to have an</p> <p>25 impact on our supplies."</p>
<p style="text-align: right;">279</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 topic in their country, they would share it</p> <p>3 with everybody else that's there. So we</p> <p>4 spoke here, we spoke in a little more general</p> <p>5 terms than we would if it was just our</p> <p>6 members.</p> <p>7 Q. But you were responsible for</p> <p>8 reporting to the International Egg Commission</p> <p>9 on topics relating to the U.S. egg industry.</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this is an example of that.</p> <p>13 Right?</p> <p>14 A. Additionally, while I always</p> <p>15 prepared it because my name is on it, to the</p> <p>16 best of -- what I preferred to do is if we</p> <p>17 had a producer at the meeting, we would have</p> <p>18 him give the U.S. report. So while I was the</p> <p>19 author of it, many of these were done by</p> <p>20 individual producers that were at the</p> <p>21 meeting.</p> <p>22 Q. You would author it, but let</p> <p>23 someone else do the reporting?</p> <p>24 A. Right. Right.</p> <p>25 Q. Okay. And you authored this</p>	<p style="text-align: right;">281</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Sometimes when people read out</p> <p>3 loud it's a little fast. Let's -- I'll just</p> <p>4 read it. These were your words. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. "Obviously, the Animal Care</p> <p>7 Program has and will continue to have an</p> <p>8 impact on our supplies." Those were your</p> <p>9 words?</p> <p>10 A. Yes.</p> <p>11 Q. And that was your expectation</p> <p>12 as president of UEP. Correct?</p> <p>13 A. Yes.</p> <p>14 MS. LEVINE: Object.</p> <p>15 THE WITNESS: Now it doesn't</p> <p>16 say --</p> <p>17 BY MR. OLSON:</p> <p>18 Q. You also write --</p> <p>19 A. It doesn't say that it will</p> <p>20 short supply or long supply, does it? It</p> <p>21 just says it will affect the supply.</p> <p>22 Q. What does the next sentence say</p> <p>23 about what it will do?</p> <p>24 A. This kind of in many ways blows</p> <p>25 my case. "While producers always demonstrate</p>

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<p style="text-align: right;">282</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the uncanny ability to produce more than we</p> <p>3 need - the phase-in will still tighten</p> <p>4 supplies."</p> <p>5 Q. And that was your expectation</p> <p>6 as president of UEP. Correct?</p> <p>7 A. At that time, yes.</p> <p>8 Q. Do you see the next paragraph?</p> <p>9 A. Yes.</p> <p>10 Q. You say, "Consolidation in our</p> <p>11 industry continues." That was true.</p> <p>12 Correct?</p> <p>13 A. Yes.</p> <p>14 Q. "We have our oldest flock in</p> <p>15 recent history..."</p> <p>16 A. Yes.</p> <p>17 Q. "...maybe ever, this in</p> <p>18 anticipation of the phase-in." Correct?</p> <p>19 A. Uh-huh. Yeah.</p> <p>20 Q. You say, "This old flock,</p> <p>21 coupled with a reduced hatch of 15 million</p> <p>22 birds, and the phase-in will result in higher</p> <p>23 prices."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">284</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 buildings because as the Layers are given</p> <p>3 greater density their productive improves</p> <p>4 substantially"?</p> <p>5 A. Surprise, surprise. We were</p> <p>6 very surprised when that happened. It was</p> <p>7 one big factor that we hadn't plugged in.</p> <p>8 Q. Let's just take it step by</p> <p>9 step. You saw those words. Correct?</p> <p>10 A. Yeah.</p> <p>11 Q. And you wrote those words?</p> <p>12 A. Yes.</p> <p>13 Q. And they were accurate.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. And how did UEP urge producers</p> <p>17 to temper their desire to construct new</p> <p>18 buildings?</p> <p>19 A. Well, we've reviewed a number</p> <p>20 of times today the suggestions that we put</p> <p>21 out with the economic outlook.</p> <p>22 Q. You can put that aside.</p> <p>23 Now, do you recall a time when</p> <p>24 the dispute with the Sparboe Companies</p> <p>25 reached a peak or escalated? I won't test</p>
<p style="text-align: right;">283</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. That was your expectation as</p> <p>3 the president of UEP. Correct?</p> <p>4 MS. LEVINE: Objection to the</p> <p>5 form of the question.</p> <p>6 THE WITNESS: Yeah, it was an</p> <p>7 expectation, but I don't know whether</p> <p>8 it happened.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. But that was your expectation?</p> <p>11 A. I'd have to look at next year's</p> <p>12 report to the IEC.</p> <p>13 Q. That was your expectation.</p> <p>14 Correct?</p> <p>15 A. Yeah.</p> <p>16 Q. You say, "Likewise, exports</p> <p>17 have played a key role this past year."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And that was your view as well.</p> <p>21 Correct?</p> <p>22 A. Yes.</p> <p>23 Q. At the bottom of page 1, do you</p> <p>24 see where you say, "We've urged Producers to</p> <p>25 temper their desire to construct new</p>	<p style="text-align: right;">285</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you, I'll hand you the document and let you</p> <p>3 review it.</p> <p>4 A. Well, I mean it was -- you</p> <p>5 know, for about three years it was a huge</p> <p>6 issue with us.</p> <p>7 - - -</p> <p>8 (Exhibit Pope-27, 12/1/03</p> <p>9 Correspondence, Bates UE0294894 &amp;</p> <p>10 UE0294895, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. I've handed you what's been</p> <p>15 marked Pope-27, and actually I'm going to</p> <p>16 hand you a couple of different things along</p> <p>17 with it.</p> <p>18 - - -</p> <p>19 (Exhibits Pope-28, 11/5/03</p> <p>20 Letter, Bates DAY0028079 &amp; DAY0028080,</p> <p>21 Pope-29, 11/7/03 Letter, Bates</p> <p>22 UE0944814, Pope-30, 11/19/03 Letter,</p> <p>23 Bates UE0944695 &amp; UE0944696, were</p> <p>24 marked for identification.)</p> <p>25 - - -</p>

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<p style="text-align: right;">286</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. I'll also hand you Pope-28.</p> <p>4 And I'll hand you another one and then I'll</p> <p>5 identify them all. I'm going to hand you two</p> <p>6 more. Pope-29 and Pope-30. While you're</p> <p>7 starting to look at them, I'll just identify</p> <p>8 them for the record.</p> <p>9 MS. LEVINE: Hold on.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Pope-27 is a document dated</p> <p>12 December 1, 2003, Bates stamped UE0294894</p> <p>13 through 895. Pope-28 is Bates stamped</p> <p>14 DAY0028079 through 80, dated November 5,</p> <p>15 2003. Pope-29 is UE0944814 through 815,</p> <p>16 dated November 7, 2003. Pope-30 is Bates</p> <p>17 stamped UE9 -- sorry, UE0944695 through 696,</p> <p>18 dated November 19, 2003. And I believe they</p> <p>19 all go together, and we'll go through them.</p> <p>20 Have you had a chance to glance at these?</p> <p>21 A. Yes.</p> <p>22 Q. Are you generally familiar with</p> <p>23 these documents?</p> <p>24 A. Yes.</p> <p>25 Q. Now, can you identify Pope-27,</p>	<p style="text-align: right;">288</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 And that's Pope-30, the letter from Mr.</p> <p>3 Isaacson. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Now, what led you, Mr. Pope, to</p> <p>6 sending these materials to the UEP board?</p> <p>7 A. Well, I think we have a</p> <p>8 responsibility at UEP to not work behind</p> <p>9 closed doors, but be open with what we've</p> <p>10 done. The board members come in, not all of</p> <p>11 them, of course, some of them are committees,</p> <p>12 some come in at other times, but basically</p> <p>13 they come in three times a year. So they</p> <p>14 don't have an opportunity to see all of this,</p> <p>15 what's going on. So in an effort to make</p> <p>16 sure that we were doing the right thing,</p> <p>17 meaning the staff, the board can come back</p> <p>18 and say what the hell did you do that for or</p> <p>19 something, you know, they could do that any</p> <p>20 time they wanted to. But I gave them the</p> <p>21 information as I had it. And then it was up</p> <p>22 to them to decide what they wanted to do, not</p> <p>23 me.</p> <p>24 Q. Understood. All right. So</p> <p>25 let's look at Pope-28, the letter from John</p>
<p style="text-align: right;">287</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the top document, as one you sent to the UEP</p> <p>3 board on December 1, 2003?</p> <p>4 A. Yes.</p> <p>5 Q. And it relates to the Sparboe</p> <p>6 Companies. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you attach some prior</p> <p>9 correspondence that you had had -- that UEP</p> <p>10 had had with the Sparboe Companies?</p> <p>11 A. Yes.</p> <p>12 Q. And also Mr. Isaacson.</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you say, "...attached is a</p> <p>16 letter from the Sparboe Company to UEP's</p> <p>17 legal council (sic), Irving Isaacson..."?</p> <p>18 A. Yes.</p> <p>19 Q. And that's Pope-28. Right?</p> <p>20 A. Yes.</p> <p>21 MS. LEVINE: Object to the form</p> <p>22 of the question.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. And Pope-29 we'll get to. And</p> <p>25 then you say, "...plus Irving's response."</p>	<p style="text-align: right;">289</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Mueller to Irving Isaacson, dated</p> <p>3 November 25, 2003, that you sent to the UEP</p> <p>4 board.</p> <p>5 A. Yeah.</p> <p>6 Q. And who is Mr. Mueller?</p> <p>7 A. In-house attorney for Sparboe's</p> <p>8 at the time. I don't know if he still is or</p> <p>9 not.</p> <p>10 Q. He refers to a meeting in</p> <p>11 Albuquerque that you, and Mr. Isaacson</p> <p>12 attended. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall that meeting?</p> <p>15 A. Yes.</p> <p>16 Q. And what do you recall about</p> <p>17 the meeting?</p> <p>18 A. Almost losing my job over it.</p> <p>19 Q. Why is that?</p> <p>20 A. Because we had so much</p> <p>21 contention from a few producers that somehow,</p> <p>22 you know, couldn't get resolved. And it's</p> <p>23 hard to remember the timing of the</p> <p>24 implementation of the program. I'm assuming</p> <p>25 that this is in the early stages of the</p>

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<p style="text-align: right;">290</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 program. And, of course, when that happens,</p> <p>3 when the hammer comes down, so to speak, that</p> <p>4 they have to start doing audits and sending</p> <p>5 in compliance reports, then I'm the scapegoat</p> <p>6 if anybody doesn't want to do those things.</p> <p>7 Just like this letter here -- I love Bob</p> <p>8 Sparboe. I can tell you that from day one.</p> <p>9 The guy was one of the most interesting guys</p> <p>10 I've ever known in my entire life. I've</p> <p>11 shared going around the world with him and I</p> <p>12 have a great deal of respect for him.</p> <p>13 Q. You said Bob Sparboe. Correct?</p> <p>14 A. Bob, yes. And so just --</p> <p>15 Q. Was he at the Albuquerque</p> <p>16 meeting, Bob Sparboe?</p> <p>17 A. I can't answer that. I'd have</p> <p>18 to look at the minutes, but he came to most</p> <p>19 of the board meetings. But I was thinking</p> <p>20 here that I see Mueller apparently said he</p> <p>21 was there or something. I can't -- I don't</p> <p>22 remember, no. Yeah, he said that the reason</p> <p>23 that he had talked to me and talked to -- but</p> <p>24 you see I went up to -- I flew up to</p> <p>25 Minneapolis at least four times, I'm going to</p>	<p style="text-align: right;">292</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Anything else?</p> <p>3 A. No, that I remember. I don't</p> <p>4 remember doing anything.</p> <p>5 Q. Do you recall the Sparboe</p> <p>6 Company asking how the associate and allied</p> <p>7 memberships of UEP factors into the</p> <p>8 Capper-Volstead issue?</p> <p>9 A. I don't remember that, but I'm</p> <p>10 sure that they -- you know, if they say they</p> <p>11 asked, they did. I don't know.</p> <p>12 Q. If you look at the Pope-28, the</p> <p>13 bottom paragraph from John Mueller, do you</p> <p>14 see where he says, "Additionally, we feel</p> <p>15 that, ultimately, the UEP mandate (it truly</p> <p>16 is not voluntary) of a 100% participation in</p> <p>17 the production of standards to the Animal</p> <p>18 Welfare Program maybe (sic) tantamount to an</p> <p>19 unfair trade practice."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have an understanding</p> <p>23 why Sparboe felt that this was a mandate that</p> <p>24 was not volunteered?</p> <p>25 A. Ask Bob. Ask him. I don't</p>
<p style="text-align: right;">291</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 say, on this exact same issue. And would</p> <p>3 have breakfast with Bob and some of his staff</p> <p>4 and his attorney every time. And gave them</p> <p>5 the opportunity to make the presentation to</p> <p>6 the board, do whatever they wanted to do,</p> <p>7 have their attorney ask them, whatever,</p> <p>8 whatever, whatever. And so it was just</p> <p>9 another step so that my board knew that the</p> <p>10 staff was not undertaking any</p> <p>11 responsibilities that belonged to the board.</p> <p>12 Q. Now, do you recall Mr. Mueller</p> <p>13 asking for some indicia proof that UEP is and</p> <p>14 remains as of that time a viable agricultural</p> <p>15 cooperative association protected by the</p> <p>16 Capper-Volstead?</p> <p>17 A. Yes. Although I don't know</p> <p>18 what that means exactly, but, yes.</p> <p>19 Q. You recall him asking for that</p> <p>20 proof?</p> <p>21 A. Yeah. Uh-huh.</p> <p>22 Q. Do you recall what, if</p> <p>23 anything, was provided to Sparboe in response</p> <p>24 to that request?</p> <p>25 A. Irving's follow-up letter.</p>	<p style="text-align: right;">293</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 know.</p> <p>3 Q. I'm just asking if you know.</p> <p>4 A. I don't know what made him pick</p> <p>5 that, because it's not. We still have</p> <p>6 20 percent industry not on it. So -- I mean,</p> <p>7 it never happened that it was mandatory.</p> <p>8 Q. Do you see in that same</p> <p>9 paragraph it continues, "Although we have</p> <p>10 requested reconsideration for the rules in</p> <p>11 the past, we have never asked for a firm</p> <p>12 written response from UEP as to why it will</p> <p>13 not reconsider the 100% cage space compliance</p> <p>14 rule of the Animal Welfare Certification</p> <p>15 Program. Please consider this letter our</p> <p>16 request that UEP, or you as their counsel,</p> <p>17 provide us with a written response."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Was a written response provided</p> <p>21 to Sparboe about why UEP would not reconsider</p> <p>22 the 100 percent rule, to your knowledge?</p> <p>23 A. You know, again, I don't think</p> <p>24 I am an idiot and I don't think the people in</p> <p>25 this room are idiots because I believe I have</p>

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<p style="text-align: right;">294</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 answered that question time and time and time</p> <p>3 again.</p> <p>4 Q. I apologize.</p> <p>5 A. And the fact that we did take</p> <p>6 it to the board time and time and time again,</p> <p>7 and so in my letter here we reviewed some of</p> <p>8 the things that we did. How inconvenient to</p> <p>9 have to fly up to Minneapolis and sit down,</p> <p>10 have a cup of coffee for two or three hours</p> <p>11 three or four times to give a member an</p> <p>12 audience.</p> <p>13 Q. I'm just trying to track down</p> <p>14 sort of --</p> <p>15 A. No. You're --</p> <p>16 Q. -- the exchange of</p> <p>17 correspondence.</p> <p>18 A. Okay. It's okay. But --</p> <p>19 Q. So -- and I apologize if you've</p> <p>20 answered the question. I'm not trying to</p> <p>21 ask --</p> <p>22 A. Ask somebody. Ask somebody</p> <p>23 else did I answer that question or not. I've</p> <p>24 answered the question three or four times,</p> <p>25 period.</p>	<p style="text-align: right;">296</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Putting the words aside,</p> <p>3 Sparboe said, we'd also like a written</p> <p>4 response on whether the Capper-Volstead --</p> <p>5 A. Yes.</p> <p>6 Q. -- still applies to the UEP.</p> <p>7 And that response was provided in Pope-30.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Where was it provided?</p> <p>11 A. To John Mueller.</p> <p>12 Q. Just where in the letter?</p> <p>13 A. Oh. Well, the only answer they</p> <p>14 got back was the one that's printed there.</p> <p>15 Q. Is it where Mr. Isaacson says,</p> <p>16 "...that we are attempting to make sure that</p> <p>17 all UEP members qualify"?</p> <p>18 A. Yes.</p> <p>19 Q. That was the answer provided to</p> <p>20 Sparboe?</p> <p>21 A. That was the answer to Sparboe.</p> <p>22 Q. And UEP was attempting to make</p> <p>23 sure that all UEP members qualified by</p> <p>24 sending out a Capper-Volstead certification</p> <p>25 form. Is that correct?</p>
<p style="text-align: right;">295</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know whether Sparboe was</p> <p>3 given a written response?</p> <p>4 A. The only thing that I know is</p> <p>5 that the letter that Irving sent to him.</p> <p>6 That's it. That's all I know.</p> <p>7 Q. Understood. So look at</p> <p>8 Pope-30, and that's the letter you're</p> <p>9 referring to. Right?</p> <p>10 A. Yes.</p> <p>11 Q. Now, the other thing that Mr.</p> <p>12 Mueller had asked for is a written response</p> <p>13 on whether the agricultural cooperative</p> <p>14 status still attaches to the UEP trade</p> <p>15 association, and you indicated it's provided</p> <p>16 in this letter. Correct?</p> <p>17 A. Well, again, you mentioned it</p> <p>18 as a trade association. It's not a trade</p> <p>19 association, but...</p> <p>20 Q. I was just using the words</p> <p>21 that --</p> <p>22 A. Well, he was wrong in his</p> <p>23 letter here, wherever Mueller's letter was,</p> <p>24 because he referred to it as a trade</p> <p>25 association.</p>	<p style="text-align: right;">297</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. What year is this? You know, I</p> <p>3 don't recall. I don't recall what we sent</p> <p>4 out.</p> <p>5 Q. If you look at Pope-29.</p> <p>6 A. Okay.</p> <p>7 Q. There's a cover letter --</p> <p>8 A. Okay.</p> <p>9 Q. -- from John Mueller and</p> <p>10 attaches what's called the Capper-Volstead</p> <p>11 certification form.</p> <p>12 A. Okay.</p> <p>13 Q. Is this how UEP at this time</p> <p>14 was attempting to --</p> <p>15 A. Yes, if I recall, that response</p> <p>16 was sent to Irving, not to us. But --</p> <p>17 Q. Other than sending out --</p> <p>18 A. -- I'm just guessing.</p> <p>19 Q. Please don't guess, if you can.</p> <p>20 I know I'm asking you a lot of questions. If</p> <p>21 you don't know, just say you don't know.</p> <p>22 That's fine.</p> <p>23 A. Okay.</p> <p>24 Q. To your knowledge, did UEP do</p> <p>25 anything else at this time to determine</p>

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<p style="text-align: right;">298</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 whether its membership was in compliance with</p> <p>3 the Capper-Volstead Act --</p> <p>4 MS. LEVINE: Objection. Asked</p> <p>5 and answered.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. -- other than sending out this</p> <p>8 certification?</p> <p>9 MS. LEVINE: Objection. Asked</p> <p>10 and answered this morning.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Okay, you can put that aside.</p> <p>14 Actually I believe this is -- I</p> <p>15 should have handed you this one as well. Let</p> <p>16 me just hand you Pope-31. Let us know if</p> <p>17 this is the UEP request to its members that</p> <p>18 they complete a certification form we were</p> <p>19 just discussing.</p> <p>20 - - -</p> <p>21 (Exhibit Pope-31, 12/5/13</p> <p>22 Letter, Bates MFI0001880 &amp; MFI0001881,</p> <p>23 was marked for identification.)</p> <p>24 - - -</p> <p>25 MS. LEVINE: What is this?</p>	<p style="text-align: right;">300</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can put that aside.</p> <p>3 MS. LEVINE: You need to let the</p> <p>4 questioner answer the -- ask the</p> <p>5 question so that the --</p> <p>6 THE WITNESS: Sorry.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. For the sake of the record, do</p> <p>9 you know the last time before December 5,</p> <p>10 2003, that UEP attempted to update its files</p> <p>11 about its member status as qualified farmers?</p> <p>12 MS. LEVINE: Object to the form</p> <p>13 of the question. Asked and answered</p> <p>14 this morning.</p> <p>15 THE WITNESS: Okay. I don't</p> <p>16 know.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. You can put that aside.</p> <p>19 Now, Mr. Pope, it's been a long</p> <p>20 day, I do think we'll finish early, but I</p> <p>21 just want you to make sure you know if you</p> <p>22 need breaks to stay strong, you always just</p> <p>23 request them, please.</p> <p>24 A. I'm doing fine.</p> <p>25 Q. Great. You know, I want to</p>
<p style="text-align: right;">299</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: 31.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. So for the record, this is</p> <p>5 document is Bates stamped MFI0001880 through</p> <p>6 1881. Can you identify this, Mr. Pope, as</p> <p>7 a --</p> <p>8 A. Well, I didn't author it and</p> <p>9 I'm sure Chad sent it out, but I don't recall</p> <p>10 it. I know that they were doing this after</p> <p>11 the meeting.</p> <p>12 Q. Let me just ask you one of</p> <p>13 those questions to see if you know the</p> <p>14 answer.</p> <p>15 A. Okay.</p> <p>16 Q. In the cover letter it says,</p> <p>17 "Periodically, it is in the best interest of</p> <p>18 United Egg Producers and it's (sic) members</p> <p>19 to update our files pertaining to your status</p> <p>20 as qualified 'farmers'."</p> <p>21 Do you see that?</p> <p>22 A. Right. Uh-huh.</p> <p>23 Q. Do you know the last time</p> <p>24 before December 5, 2003 --</p> <p>25 A. No, I don't.</p>	<p style="text-align: right;">301</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 circle back to Exhibit 26.</p> <p>3 MS. LEVINE: He doesn't have it.</p> <p>4 MR. OLSON: You've been handed</p> <p>5 it now.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. This is that presentation to</p> <p>8 the International Egg Commission.</p> <p>9 A. Okay.</p> <p>10 Q. On the second page there's a</p> <p>11 seal that says, "ANIMAL CARE CERTIFIED" with</p> <p>12 the check mark.</p> <p>13 A. Yes.</p> <p>14 Q. Who developed that seal?</p> <p>15 A. Well, as I recall -- I don't</p> <p>16 remember. But as I recall, there were a</p> <p>17 number of options that were developed by</p> <p>18 different people and they were turned over to</p> <p>19 the Animal Welfare Committee. They were the</p> <p>20 ones that decided and they brought it to the</p> <p>21 board.</p> <p>22 Q. But you don't recall who came</p> <p>23 up with it?</p> <p>24 A. No.</p> <p>25 Q. Do you have an understanding of</p>

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<p style="text-align: right;">302</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 what the words "animal care" there meant,</p> <p>3 what was being communicated by those words?</p> <p>4 A. Well, the reason that that's</p> <p>5 why there is a definition under it, that we</p> <p>6 would propose, and this was -- it was</p> <p>7 referred to and suggested by USDA and the</p> <p>8 Justice Department that we clarify what</p> <p>9 animal care certified is.</p> <p>10 Q. Well, we'll get to that.</p> <p>11 A. Okay.</p> <p>12 Q. But when the seal was created,</p> <p>13 did you have an understanding of what the</p> <p>14 words "animal care" were supposed to</p> <p>15 communicate?</p> <p>16 A. Yes.</p> <p>17 Q. What was --</p> <p>18 A. It was supposed to represent</p> <p>19 that that farm and those eggs were produced</p> <p>20 under the guidelines of the UEP certified</p> <p>21 program.</p> <p>22 Q. You can put that aside.</p> <p>23 Who is Roger Deffner?</p> <p>24 A. He's a UEP member through</p> <p>25 National Egg Company up in Seattle. And he's</p>	<p style="text-align: right;">304</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah. It was basically an</p> <p>3 agenda. Proposed agenda.</p> <p>4 Q. For what?</p> <p>5 A. For an area meeting.</p> <p>6 Q. Are these these annual regional</p> <p>7 meetings we talked about before?</p> <p>8 A. Yes.</p> <p>9 Q. So you were making suggestions</p> <p>10 to Mr. Deffner about the agenda for those</p> <p>11 meetings?</p> <p>12 A. Yes.</p> <p>13 Q. So let's look at the memo which</p> <p>14 is the proposed agenda. There's -- the first</p> <p>15 bullet that you put in this document is</p> <p>16 titled, "Industry Economics."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then the second sentence</p> <p>20 there, you say, "Profitability is being</p> <p>21 jeopardized at a time when programs are in</p> <p>22 place to maintain profitable levels."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. You're referring to the</p>
<p style="text-align: right;">303</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 been on our board for a number of years and</p> <p>3 was our chairman at one point.</p> <p>4 - - -</p> <p>5 (Exhibit Pope-32, 6/30/04 E-mail</p> <p>6 with attachment, Bates UE0888743 -</p> <p>7 UE0888745, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Let me hand you what we've</p> <p>12 marked Pope-32. I'll just ask you to review</p> <p>13 it, please. I'll identify it for the record</p> <p>14 as Bates stamped UE0888743 through 745. And</p> <p>15 let us know -- have you flipped through it?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay, great. Can you identify</p> <p>18 the document as a cover e-mail -- as an</p> <p>19 e-mail that you wrote to Mr. Deffner on</p> <p>20 June 30, 2004?</p> <p>21 A. Yes. Uh-huh.</p> <p>22 Q. That's a yes. Right?</p> <p>23 A. Yes.</p> <p>24 Q. And you attach a memorandum.</p> <p>25 Correct?</p>	<p style="text-align: right;">305</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 certified program. Correct?</p> <p>3 MS. LEVINE: Objection to the</p> <p>4 form of the question.</p> <p>5 THE WITNESS: Well, they were in</p> <p>6 place, but they were never in place to</p> <p>7 assure that anybody made a profit.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Well, what program were you</p> <p>10 referring to other than the -- well, strike</p> <p>11 that.</p> <p>12 One of the programs you're</p> <p>13 referring to is the UEP certified program.</p> <p>14 MS. LEVINE: Objection to the</p> <p>15 form of the question.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. Is that right?</p> <p>18 A. I think the way to answer this</p> <p>19 is that there's a number of programs that</p> <p>20 could attribute to the economic well-being or</p> <p>21 not well-being of the industry.</p> <p>22 Q. And one of those is --</p> <p>23 A. And one of those is the Animal</p> <p>24 Welfare Program.</p> <p>25 Q. So that's one of the programs</p>

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<p style="text-align: right;">306</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you're referring to here. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. What are the other programs?</p> <p>5 A. The recommendations on early</p> <p>6 molt, same old stuff we've been talking</p> <p>7 about.</p> <p>8 Q. I know you don't like the term</p> <p>9 "supply management" for those programs. Is</p> <p>10 there another term that you think is better?</p> <p>11 A. It's an Animal Welfare Program,</p> <p>12 period.</p> <p>13 Q. No. I mean the early molt type</p> <p>14 programs.</p> <p>15 A. They're just economic</p> <p>16 recommendations to the industry, that's all.</p> <p>17 Q. Then the third bullet says,</p> <p>18 "Animal Care," and you say, "'Staying the</p> <p>19 Course' increasing pressures will challenge</p> <p>20 the industry's 'grit' to maintain the most</p> <p>21 successful UEP/industry program EVER!!"</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. You say, "We need to urge all</p> <p>25 Producers to participate in this program,"</p>	<p style="text-align: right;">308</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Animal Welfare Program. So it was -- you</p> <p>3 know, when we first proposed the program, a</p> <p>4 doctor by the name of Dr. Allan Rahn,</p> <p>5 R-A-H-N, from Michigan State, told our</p> <p>6 producers that the cost of doing this was</p> <p>7 going to be \$0.06 to \$0.09 a dozen. Now,</p> <p>8 that's what everybody faced when they went to</p> <p>9 a board meeting and decided on whether to</p> <p>10 have this program or not. And so it took a</p> <p>11 lot of -- I used the word "grit," and I think</p> <p>12 that's true. It took a lot for them to adopt</p> <p>13 a guideline that they knew was going to cost</p> <p>14 them \$0.06 to \$0.09 a dozen.</p> <p>15 Q. You thought that --</p> <p>16 A. They don't make that much a</p> <p>17 dozen.</p> <p>18 Q. You thought that the companies</p> <p>19 that hadn't joined the program by this time</p> <p>20 should join the program.</p> <p>21 A. Well, let me --</p> <p>22 Q. Strike that. That's okay.</p> <p>23 A. Because I want to answer. From</p> <p>24 our standpoint, from a staff standpoint,</p> <p>25 you're a member, but you don't want to do the</p>
<p style="text-align: right;">307</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you underline all. Correct?</p> <p>3 A. Uh-huh.</p> <p>4 Q. That was your view at the time.</p> <p>5 Correct?</p> <p>6 A. Yeah.</p> <p>7 Q. You say, "The 'hold-outs' have</p> <p>8 'held-out' long enough."</p> <p>9 Do you see that?</p> <p>10 A. Uh-huh.</p> <p>11 Q. What do you mean by that?</p> <p>12 A. Well, like any program that UEP</p> <p>13 would implement, we always had hope for the</p> <p>14 widest participation possible, whether it was</p> <p>15 an insurance program, sanitation supplies,</p> <p>16 whatever. The more people you have</p> <p>17 participating, the better the programs runs,</p> <p>18 that's all. When you're trying to implement</p> <p>19 a program like the Animal Welfare Program, it</p> <p>20 was the only program that we ever implemented</p> <p>21 that had such a dramatic impact on changing</p> <p>22 the way that the industry does business. All</p> <p>23 these other stuff is just fluffy surrounding</p> <p>24 stuff, you know what I mean. But one that</p> <p>25 really impacted their bottom line was this</p>	<p style="text-align: right;">309</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 certified program, so you don't give a damn</p> <p>3 how you take care of your birds, you don't</p> <p>4 care. You're going to let yourself</p> <p>5 vulnerable to some neighbor that's going to</p> <p>6 come in, raise your farm, take you to court,</p> <p>7 and that's when we'll hear from you. We're</p> <p>8 trying to do this ahead of time so that you</p> <p>9 have an answer if anybody comes to question</p> <p>10 your husbandry practices on your animals.</p> <p>11 Q. But those companies who didn't</p> <p>12 want to join the program, but were still UEP</p> <p>13 members, you needed to support them as well.</p> <p>14 Correct?</p> <p>15 A. Sure. And we do. And they</p> <p>16 still are non-certified companies.</p> <p>17 Q. You can put that aside.</p> <p>18 Why don't we take a quick</p> <p>19 break.</p> <p>20 VIDEOGRAPHER: The time is</p> <p>21 approximately 3:16 p.m. We are off</p> <p>22 the record.</p> <p>23 - - -</p> <p>24 (A recess was taken.)</p> <p>25 - - -</p>

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<p style="text-align: right;">310</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: The time is</p> <p>3 approximately 3:31 p.m. This begins</p> <p>4 tape five. We are back on the record.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Mr. Pope, who is the Council of</p> <p>7 Better Business Bureaus?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you know anything about it?</p> <p>10 A. Very little. I didn't deal</p> <p>11 with that issue.</p> <p>12 Q. Do you know what the National</p> <p>13 Advertising Review Board is?</p> <p>14 A. You know, I've heard of that,</p> <p>15 and all I can do is assume what it is, but I</p> <p>16 don't really know what it is.</p> <p>17 Q. Do you recall a time that the</p> <p>18 Council for Better Business Bureaus had its</p> <p>19 National Advertising Division examine the UEP</p> <p>20 program?</p> <p>21 A. Yes. Headed up -- headed by --</p> <p>22 headed up by a member of an animal welfare</p> <p>23 group, activist group. Yes.</p> <p>24 Q. Who was headed up?</p> <p>25 A. I don't know his name. He was</p>	<p style="text-align: right;">312</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you know, sometimes they're good and</p> <p>3 sometimes they aren't. We're more</p> <p>4 effective at UEP when we have enough</p> <p>5 money. We're less effective when we</p> <p>6 don't have any money.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. So at some point the National</p> <p>9 Advertising Division of the Council of Better</p> <p>10 Business Bureaus was looking at UEP. Now,</p> <p>11 just to be clear, are you suggesting that you</p> <p>12 at some point uncovered information that that</p> <p>13 division was headed up by an animal welfare</p> <p>14 activist?</p> <p>15 MS. LEVINE: Objection to the</p> <p>16 form of the question. Misstated what</p> <p>17 the witness said that the FTC was</p> <p>18 looking into.</p> <p>19 THE WITNESS: We found out later</p> <p>20 that the staff person from BBB was an</p> <p>21 activist, animal welfarist, and so we</p> <p>22 didn't get anything we didn't expect.</p> <p>23 Disappointed?</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Do you recall the name of that</p>
<p style="text-align: right;">311</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the one that Gene met with and that we found</p> <p>3 out about, so we took all that with a grain</p> <p>4 of salt. I did anyhow.</p> <p>5 Q. Did you take it as a grain of</p> <p>6 salt when the Federal Trade Commission</p> <p>7 decided to investigate UEP's program?</p> <p>8 A. No.</p> <p>9 Q. What's the Federal Trade</p> <p>10 Commission?</p> <p>11 A. Well, they look at things</p> <p>12 where -- I don't know the definition there</p> <p>13 either, but they're looking for unfair trade</p> <p>14 practices. That's their job.</p> <p>15 Q. This is an agency of the</p> <p>16 federal government. Correct?</p> <p>17 A. Yes. Uh-huh.</p> <p>18 Q. Is it a credible agency, in</p> <p>19 your view?</p> <p>20 MS. LEVINE: Objection to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: Well, yeah. You</p> <p>23 know it's credible, but like so many</p> <p>24 government agencies, some of them have</p> <p>25 adequate funding and some don't. So,</p>	<p style="text-align: right;">313</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 person?</p> <p>3 A. No.</p> <p>4 Q. When you say they were an</p> <p>5 activist in animal welfare, what does that</p> <p>6 mean?</p> <p>7 A. Well, they participated in one</p> <p>8 of the major activist groups, PETA, Save the</p> <p>9 Animals, Save the Trees, save the whatever,</p> <p>10 you know, there's just all kinds of them. I</p> <p>11 mean, they come out of the woodwork. We got</p> <p>12 letters every single day after day after day</p> <p>13 from different animal -- you never knew which</p> <p>14 one was -- it seemed to us that the most</p> <p>15 credible one was the U.S. Humane Society, in</p> <p>16 our judgment. They were the ones that were</p> <p>17 most effective here in Washington anyhow.</p> <p>18 - - -</p> <p>19 (Exhibit Pope-33, 8/25/04 E-mail</p> <p>20 with attachments, Bates UE0649033 -</p> <p>21 UE0649048, was marked for</p> <p>22 identification.)</p> <p>23 - - -</p> <p>24 BY MR. OLSON:</p> <p>25 Q. Well, let me hand you what</p>

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<p style="text-align: right;">314</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 we've marked as Pope-33. This is a document</p> <p>3 stamped UE0649033 through 649048, and I'll</p> <p>4 ask if you can identify this as an e-mail</p> <p>5 with attachments that you sent on August 25,</p> <p>6 2004?</p> <p>7 A. Okay.</p> <p>8 Q. Can you identify it as an</p> <p>9 e-mail you sent with attachments on</p> <p>10 August 25, 2004?</p> <p>11 A. You know --</p> <p>12 Q. You can take your time to flip</p> <p>13 through the document and then we can circle</p> <p>14 back to portions of it if you'd like.</p> <p>15 A. (Reviewing document.)</p> <p>16 Okay.</p> <p>17 Q. Can you identify this as an</p> <p>18 e-mail that you sent on August 25, 2004?</p> <p>19 A. Excuse me. August -- let me go</p> <p>20 back a ways. Okay. The August 10th issue?</p> <p>21 Q. Just the cover e-mail is the</p> <p>22 one you sent on August 25, 2004. Correct?</p> <p>23 A. Okay.</p> <p>24 Q. Is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">316</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. So you're referring to the</p> <p>3 first page of the attachment?</p> <p>4 A. Yeah.</p> <p>5 Q. And this is a draft press</p> <p>6 release that you and he put together.</p> <p>7 Correct?</p> <p>8 A. Somebody put together.</p> <p>9 Q. All right. Let's just see if</p> <p>10 we have the timeline in mind, the general</p> <p>11 chronology here. What happened is the</p> <p>12 National Advertising Division of the Council</p> <p>13 of Better Business Bureaus launched an</p> <p>14 investigation into whether UEP's reference to</p> <p>15 the program being an Animal Care Program was</p> <p>16 deceptive advertising. Correct?</p> <p>17 MS. LEVINE: Objection to the</p> <p>18 form of the question.</p> <p>19 THE WITNESS: They launched at</p> <p>20 the request of probably the most</p> <p>21 radical animal welfare group there is,</p> <p>22 Compassion Over Killing. We even</p> <p>23 responded to that, I don't know why,</p> <p>24 but we did. They made this complaint</p> <p>25 because they had this buddy, what's</p>
<p style="text-align: right;">315</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you attach some</p> <p>3 materials --</p> <p>4 A. Yeah.</p> <p>5 Q. -- related to investigations</p> <p>6 about the Animal Care Certified Program.</p> <p>7 Correct?</p> <p>8 MS. LEVINE: Objection to the</p> <p>9 form of the question and</p> <p>10 characterizing the documents.</p> <p>11 THE WITNESS: So are you saying</p> <p>12 that this -- where it says, "DRAFT -</p> <p>13 NOT APPROVED AND NOT FOR</p> <p>14 DISTRIBUTION," is that what you're</p> <p>15 talking about being attached?</p> <p>16 BY MR. OLSON:</p> <p>17 Q. There's a variety of things</p> <p>18 attached.</p> <p>19 A. We don't know what they are?</p> <p>20 Q. Just page through them.</p> <p>21 A. You don't know what they are?</p> <p>22 Q. I know what they are. Do you?</p> <p>23 A. Well, it says here -- no. The</p> <p>24 reason I say that, it says the "DRAFT - NOT</p> <p>25 APPROVED AND NOT FOR DISTRIBUTION," so...</p>	<p style="text-align: right;">317</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 his name here, Bruce Hopewell. And so</p> <p>3 we did our very best in presenting our</p> <p>4 program to them. And actually they</p> <p>5 recommended some changes, and we did.</p> <p>6 We took those into consideration.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. So have you seen the name of</p> <p>9 the person that you believe was the animal</p> <p>10 welfare activist that was involved?</p> <p>11 A. Yeah, I believe it was this</p> <p>12 Bruce guy.</p> <p>13 Q. Bruce Hopewell from the</p> <p>14 National Advertising --</p> <p>15 A. Yeah, and I'm saying that, and</p> <p>16 I don't really know that for sure. I'm just</p> <p>17 saying that this strikes me that that might</p> <p>18 be the person we're talking about.</p> <p>19 Q. So --</p> <p>20 A. See, because he was an</p> <p>21 employee -- as I understand it, he was an</p> <p>22 employee of BBB. But he was the manager of</p> <p>23 NARB. So we probably set up their agenda,</p> <p>24 had them meet, so on and so forth.</p> <p>25 Q. Now, before we get to NARB,</p>

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<p style="text-align: right;">318</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 let's start with the first step in this which</p> <p>3 is a review by something called the NAD. Do</p> <p>4 you recall the NAD?</p> <p>5 A. Yeah, that's part of BB, Better</p> <p>6 Business, same outfit.</p> <p>7 Q. And that division found that</p> <p>8 UEP's use of the words "animal care" in the</p> <p>9 certified program was deceptive and</p> <p>10 misleading. Correct?</p> <p>11 MS. LEVINE: Object to the form</p> <p>12 of the question.</p> <p>13 THE WITNESS: Yeah --</p> <p>14 BY MR. OLSON:</p> <p>15 Q. Well, let's try it this way:</p> <p>16 Why don't you put that document down for a</p> <p>17 moment. Let me hand you a document from the</p> <p>18 United States Federal Trade Commission,</p> <p>19 sometimes called the FTC. We've marked this</p> <p>20 Pope-34.</p> <p>21 - - -</p> <p>22 (Exhibit Pope-34, 9/30/05 Letter</p> <p>23 with attachment, was marked for</p> <p>24 identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">320</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 September 30, 2005?</p> <p>3 A. Yes.</p> <p>4 MS. LEVINE: Steve, do you have</p> <p>5 a Bates number for this document?</p> <p>6 MR. OLSON: I believe we found</p> <p>7 this document online.</p> <p>8 BY MR. OLSON:</p> <p>9 Q. You said yes. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. So this is the division of the</p> <p>12 federal government that examines deceptive</p> <p>13 advertising practices. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Now, just to get the chronology</p> <p>16 again, if you look at the second full</p> <p>17 paragraph of FTC's letter, FTC says that it</p> <p>18 received a referral of the matter from the</p> <p>19 National Advertising Division of the Council</p> <p>20 of Better Business Bureaus on July 16, 2004.</p> <p>21 Do you see that?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Is that consistent with your</p> <p>24 knowledge?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">319</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. If you could just review</p> <p>4 Pope-34, please.</p> <p>5 A. There's an interesting note by</p> <p>6 the -- you don't want to hear it?</p> <p>7 MS. LEVINE: He is not asking</p> <p>8 about that document.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. Well, we might get to it, but</p> <p>11 let's start with -- we're trying to do the</p> <p>12 chronology. If you could just look at</p> <p>13 Pope-34.</p> <p>14 MS. LEVINE: Mr. Pope, this is</p> <p>15 what Mr. Olson was asking you about.</p> <p>16 THE WITNESS: Okay.</p> <p>17 MS. LEVINE: That's Pope-33.</p> <p>18 This is Pope-34.</p> <p>19 THE WITNESS: Oh, okay. All</p> <p>20 right. Okay.</p> <p>21 BY MR. OLSON:</p> <p>22 Q. Now, can you identify Pope-34</p> <p>23 as a document sent to you by the Division of</p> <p>24 Advertising Practices of the United States of</p> <p>25 America's Federal Trade Commission on</p>	<p style="text-align: right;">321</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. It says the NAB, and then</p> <p>3 subsequently the National Advertising Review</p> <p>4 Board, on appeal, found that the ACC seal</p> <p>5 program was misleading, and it continues. Do</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. It says, those two bodies found</p> <p>9 it was misleading that consumers could</p> <p>10 reasonably interpret the seal to mean that</p> <p>11 the hens who laid the eggs sold in the</p> <p>12 ACC-labeled cartons are afforded a more</p> <p>13 humane level of care than what is allowed by</p> <p>14 the UEP guideline. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is that consistent with your</p> <p>17 knowledge about what those bodies found?</p> <p>18 A. Yes.</p> <p>19 Q. So first there is this NAD, and</p> <p>20 they looked at the animal care certification</p> <p>21 and found it misleading. Correct?</p> <p>22 MS. LEVINE: Objection to the</p> <p>23 form of the question.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. And then that was appealed?</p>

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<p style="text-align: right;">322</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. I think I answered that once or</p> <p>3 twice, but that's what they said, yes. So we</p> <p>4 did go to the FTC, right.</p> <p>5 Q. Well, and then what you did is</p> <p>6 you appealed that to the National Advertising</p> <p>7 Review Board. Correct?</p> <p>8 A. Yes. Uh-huh. Yes.</p> <p>9 Q. Now, just to be clear, this</p> <p>10 person who you find -- who you think is an</p> <p>11 animal welfare activist, was he at the NAD,</p> <p>12 or was he at the NARB or was he at both?</p> <p>13 A. I think he was at both, but I</p> <p>14 don't know, because I wasn't at both. In</p> <p>15 fact, I don't think I was at either one.</p> <p>16 Q. What was your role in these</p> <p>17 proceedings?</p> <p>18 A. None. I met with the FTC, but</p> <p>19 I never met with the Better Business Bureau</p> <p>20 or National Board or whatever. I think that</p> <p>21 was strictly Gene and Haley.</p> <p>22 Q. When you say "Haley," do you</p> <p>23 mean -- who is Haley?</p> <p>24 A. He's counsel from Brandon</p> <p>25 Isaacson.</p>	<p style="text-align: right;">324</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 happened is the NAD found the claim that this</p> <p>3 was animal care certified misleading, the</p> <p>4 NARB did on appeal.</p> <p>5 A. Okay.</p> <p>6 Q. Right? And then UEP had some</p> <p>7 dialogue with those bodies about how to fix</p> <p>8 the problem?</p> <p>9 A. Right.</p> <p>10 Q. Then ultimately the NAD found</p> <p>11 that UEP hadn't taken steps sufficient to</p> <p>12 comply with this decision and then referred</p> <p>13 that matter to the Federal Trade Commission.</p> <p>14 Is that right?</p> <p>15 A. Yeah. Okay.</p> <p>16 MS. LEVINE: Objection to the</p> <p>17 form of the question.</p> <p>18 BY MR. OLSON:</p> <p>19 Q. And then the Federal Trade</p> <p>20 Commission investigated this issue?</p> <p>21 A. Yes.</p> <p>22 Q. You had dialogue with FTC?</p> <p>23 A. Yes.</p> <p>24 Q. And then ultimately UEP, to</p> <p>25 resolve these investigations, agreed to no</p>
<p style="text-align: right;">323</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. So your understanding is that</p> <p>3 Gene Gregory worked with counsel from Brandon</p> <p>4 Isaacson before the NAD and NARB?</p> <p>5 A. Yes.</p> <p>6 Q. And you don't recall attending</p> <p>7 any proceedings?</p> <p>8 A. No.</p> <p>9 Q. Do you recall reviewing</p> <p>10 documents submitted to those bodies?</p> <p>11 A. You know, I reviewed some of</p> <p>12 it, and it should have been written by</p> <p>13 somebody over at USDA, because they were</p> <p>14 trying to support the staff member at BBB,</p> <p>15 and at the same time, I think, recognized the</p> <p>16 merits of the program. The panel is mindful</p> <p>17 that the essence of the certification program</p> <p>18 is to communicate compliance with a set of</p> <p>19 standards.</p> <p>20 Q. We're going to get to those</p> <p>21 documents. We're still on --</p> <p>22 A. You promise?</p> <p>23 Q. I do promise. We're actually</p> <p>24 really close.</p> <p>25 But on that chronology, so what</p>	<p style="text-align: right;">325</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 longer refer to the program as an Animal Care</p> <p>3 Program. Correct?</p> <p>4 A. I don't remember the exact</p> <p>5 recommendations, but we took FTC's</p> <p>6 recommendations and did it.</p> <p>7 Q. And is it -- as reflected in</p> <p>8 Pope-34, what you did was removing reference</p> <p>9 to the term "Animal Care Certified" from the</p> <p>10 seal related to the program. Correct?</p> <p>11 A. I don't remember. You got me</p> <p>12 all confused now. I don't know if we took</p> <p>13 that out and we changed the label or what,</p> <p>14 I'm not sure.</p> <p>15 Q. If you look at the bottom of</p> <p>16 the first page of 34, this is from the FTC,</p> <p>17 it says, "You have informed us that, in</p> <p>18 response to the concerns raised about the use</p> <p>19 of the Animal Care Certified logo, the United</p> <p>20 Egg Producers has developed a revised seal</p> <p>21 for its hen husbandry certification program</p> <p>22 that removes the reference to the term</p> <p>23 'Animal Care Certified.'" Right?</p> <p>24 MS. LEVINE: Objection to the</p> <p>25 form of the question. The witness can</p>

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<p style="text-align: right;">326</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 testify, he can testify. I think he's</p> <p>3 just agreeing with what the document</p> <p>4 says.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Do you see where -- let's just</p> <p>7 go step by step. Do you see where it says</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. Is that consistent with your</p> <p>11 knowledge?</p> <p>12 A. Yes.</p> <p>13 Q. And there's a new logo that was</p> <p>14 used which now just says, "United Egg</p> <p>15 Producers Certified." Right?</p> <p>16 A. Yes.</p> <p>17 Q. And the UEP agreed to use that</p> <p>18 terminology as opposed to the animal care</p> <p>19 certified terminology on new egg cartons?</p> <p>20 A. Yeah.</p> <p>21 Q. And then UEP further agreed</p> <p>22 that remaining egg cartons that had the old</p> <p>23 animal care certified terminology had to be</p> <p>24 removed from retail sale. Correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">328</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Then it continues, and it says,</p> <p>3 "...and in any event, that the certification</p> <p>4 seal did not state or imply a humane level of</p> <p>5 care."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. That's the position that UEP</p> <p>9 took before this NARB. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. It continues in the next</p> <p>12 paragraph to discuss the NAD's decision, and</p> <p>13 it says, "...NAD agreed with the challenger</p> <p>14 and found that the seal conveyed a message</p> <p>15 that hens raised in compliance with the</p> <p>16 certification program were treated more</p> <p>17 humanely than the level of care reflected by</p> <p>18 the guidelines."</p> <p>19 Do you see that?</p> <p>20 MS. LEVINE: Object to the form</p> <p>21 of the question. This witness can</p> <p>22 answer anything he remembers.</p> <p>23 THE WITNESS: I remember that</p> <p>24 during this period of time --</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">327</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And the FTC said it would</p> <p>3 continue to monitor UEP's use in advertising</p> <p>4 of the program in the marketplace. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Now let's look -- now that</p> <p>7 we've oriented ourselves, let's look at</p> <p>8 Exhibit 33. If you look about six,</p> <p>9 seven pages in, the Bates number ends 649038,</p> <p>10 you'll see a document entitled, "NARB Panel</p> <p>11 Report #121."</p> <p>12 A. Okay.</p> <p>13 Q. I just wanted to ask you a</p> <p>14 couple of questions about it. This now is</p> <p>15 the report by the NARB on appeal from the</p> <p>16 original decision by the NAD. Right?</p> <p>17 A. Yes.</p> <p>18 Q. If you look in the second</p> <p>19 paragraph of this, the NARB says what UEP</p> <p>20 argued. It says, "UEP argued that it was not</p> <p>21 a national advertiser and therefore the</p> <p>22 certification program was beyond NAD's</p> <p>23 purview..."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">329</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm sorry.</p> <p>3 A. Okay. Go ahead.</p> <p>4 Q. My question which is pending is</p> <p>5 just whether you saw those words, just to</p> <p>6 orient ourselves. Do you see the words I</p> <p>7 just read to you?</p> <p>8 A. I just looked at them. I saw</p> <p>9 them now. I don't know if I saw them before.</p> <p>10 Q. So in other -- do you know</p> <p>11 whether you reviewed this document at the</p> <p>12 time?</p> <p>13 A. Well, I'm just -- yes, I did</p> <p>14 review it at the time. I don't remember -- I</p> <p>15 don't remember it, but...</p> <p>16 Q. But obviously as president of</p> <p>17 UEP, this was a significant report. Correct?</p> <p>18 MS. LEVINE: Objection to the</p> <p>19 form of the question.</p> <p>20 THE WITNESS: Well --</p> <p>21 MS. LEVINE: The witness can</p> <p>22 answer to what he remembers.</p> <p>23 THE WITNESS: If you ask BBB, it</p> <p>24 was probably very significant to them.</p> <p>25 Was it significant to UEP? After</p>

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<p style="text-align: right;">330</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 discovering what we did, we weren't --</p> <p>3 we could care less what they thought</p> <p>4 and we thought that the decision on</p> <p>5 our label should be left with the FTC,</p> <p>6 which is what we did.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Okay. So -- and the FTC only</p> <p>9 agreed to drop the investigation or --</p> <p>10 A. What does that mean?</p> <p>11 Q. To stop the investigation after</p> <p>12 you agreed to no longer call it the Animal</p> <p>13 Care Program. Right?</p> <p>14 A. Yeah, is that what that means?</p> <p>15 Does it mean that they said it was okay to do</p> <p>16 it the way we did it? Is that what that</p> <p>17 means?</p> <p>18 Q. Well, what the NARB --</p> <p>19 A. I don't care what the NARB</p> <p>20 said.</p> <p>21 Q. What the NARB --</p> <p>22 A. When they -- when the NARB told</p> <p>23 the FTC what their concerns were, if the FTC</p> <p>24 looked at the issue and they got done and the</p> <p>25 FTC said this and this and this about it and</p>	<p style="text-align: right;">332</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 wings)."</p> <p>3 Do you see that?</p> <p>4 A. Well, that was that guy's</p> <p>5 opinion.</p> <p>6 Q. Is that a true statement?</p> <p>7 A. I mean, I don't agree with it,</p> <p>8 but I see it there.</p> <p>9 Q. You disagree with that</p> <p>10 statement?</p> <p>11 A. Yeah, they don't know a thing</p> <p>12 about production. They have never been in</p> <p>13 the chicken house, they don't know whether a</p> <p>14 bird flaps its wing. They were told by</p> <p>15 somebody, Bruce, that they can't flap their</p> <p>16 wings. Now I say they can flap their wings,</p> <p>17 so it's me and Bruce.</p> <p>18 Q. Okay. If you turn another two</p> <p>19 pages. No, actually just the next page,</p> <p>20 there's a footnote at the bottom that says,</p> <p>21 "UEP contended at the hearing that the</p> <p>22 certification program was only aimed at</p> <p>23 retailers, not consumers."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">331</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 we're not investigating any more.</p> <p>3 Q. What's your understanding of</p> <p>4 the basis of the NARB's decision?</p> <p>5 MS. LEVINE: Objection to the</p> <p>6 form of the question.</p> <p>7 THE WITNESS: I don't even know</p> <p>8 that they have any authority. I don't</p> <p>9 know anything about it. I never heard</p> <p>10 of that organization quite frankly.</p> <p>11 So I don't know.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. On page -- on the next page of</p> <p>14 this NARB decision, the NARB writes, "The UEP</p> <p>15 guidelines recommends increased space for</p> <p>16 hens and cages, in the range of 67-86 square</p> <p>17 inches, although producers need not reach the</p> <p>18 67 inch minimum until 2008."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. True statement?</p> <p>22 A. Yes.</p> <p>23 Q. It continues, it says,</p> <p>24 "(67 square inches, while an improvement, is</p> <p>25 not enough space for a hen to flap its</p>	<p style="text-align: right;">333</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is that a true statement?</p> <p>3 MS. LEVINE: Objection to the</p> <p>4 form of the question. This witness</p> <p>5 can answer if he remembers.</p> <p>6 BY MR. OLSON:</p> <p>7 Q. Was it a true statement that</p> <p>8 the program was not aimed at consumers, only</p> <p>9 retailers?</p> <p>10 MS. LEVINE: Objection to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: The primary motive</p> <p>13 of our program was to protect our</p> <p>14 customers which were the retailers of</p> <p>15 shell eggs. That was our major</p> <p>16 motivation.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. You can put that aside. You</p> <p>19 can put both those aside.</p> <p>20 - - -</p> <p>21 (Exhibit Pope-35, United Voices</p> <p>22 dated August 12, 2004, Bates UE0072463</p> <p>23 - UE0072466, was marked for</p> <p>24 identification.)</p> <p>25 - - -</p>

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<p style="text-align: right;">334</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. OLSON:</p> <p>3 Q. Let me hand you what's been</p> <p>4 marked Pope-35. This is Bates stamped</p> <p>5 UE002 -- sorry, 0072463 through 72466. And</p> <p>6 I'll ask if you can identify it as United</p> <p>7 Voices dated August 12, 2004?</p> <p>8 A. Yes.</p> <p>9 Q. This United Voices was sent at</p> <p>10 a time that egg prices had decreased.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this is the United Voices</p> <p>14 that you referenced this morning where you</p> <p>15 wrote an editorial for United Voices.</p> <p>16 Correct?</p> <p>17 A. Yeah.</p> <p>18 Q. It's titled, "Backfilling - A</p> <p>19 Loophole of a Hangman's Noose."</p> <p>20 A. Yeah.</p> <p>21 Q. Can you explain that metaphor</p> <p>22 to us?</p> <p>23 A. Yeah. We were -- I was -- and</p> <p>24 here again, it's just my opinion and I --</p> <p>25 it's just gathered from things that were said</p>	<p style="text-align: right;">336</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 suggestions throughout this thing, despite</p> <p>3 the fact that they were implementing more</p> <p>4 cage space for the birds, lo and behold our</p> <p>5 price goes down. How is that consistent with</p> <p>6 your supposition that we were controlling the</p> <p>7 production by using an Animal Welfare</p> <p>8 Program? I say it does just the opposite.</p> <p>9 What happens is, it shows how nimble</p> <p>10 producers are and farmers are. They're very</p> <p>11 creative. And so here we go, implementing a</p> <p>12 program with a specific timetable, agreed to</p> <p>13 and supported by the chain stores and the</p> <p>14 fast food places in the United States, and</p> <p>15 here we -- and part of our scheduling out for</p> <p>16 the six years was taking into consideration</p> <p>17 the normal, the normal mortality level of the</p> <p>18 flock of birds. So to the extent that they</p> <p>19 backfill all those, you're just -- you're</p> <p>20 doing two really bad things. You're messing</p> <p>21 up the schedule. Their messing up the</p> <p>22 schedule. And number two, from a health</p> <p>23 standpoint, it's a terrible practice to put</p> <p>24 in different age birds with other birds.</p> <p>25 Q. But, sir, you don't -- when you</p>
<p style="text-align: right;">335</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 in the industry, that we had a lot of</p> <p>3 loophole in establishing the time frame of</p> <p>4 implementation of the guidelines. And this</p> <p>5 issue was related, it seemed like a small one</p> <p>6 at the time, which was backfill,</p> <p>7 understanding that I didn't know what the</p> <p>8 hell backfill was at the time. I wasn't sure</p> <p>9 what they were talking about. So after that,</p> <p>10 and after I came back and went out to visit</p> <p>11 the farms and so on and so forth, I found out</p> <p>12 what backfilling was, what it meant. So I</p> <p>13 wanted to go back, I wanted to go back to the</p> <p>14 Animal Welfare Committee so the producer</p> <p>15 could decide on the issue, if backfilling was</p> <p>16 good or bad. That was their decision, not</p> <p>17 mine.</p> <p>18 Q. So when you in the editorial</p> <p>19 referred to backfilling being a noose that is</p> <p>20 strangling the opportunity of enjoying once</p> <p>21 again the favorable prices for our product --</p> <p>22 A. Yeah.</p> <p>23 Q. -- what were you referring to</p> <p>24 there?</p> <p>25 A. Well, contrary to your</p>	<p style="text-align: right;">337</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 backfill, you don't have to put different age</p> <p>3 birds together in the same cage, do you?</p> <p>4 A. Well, I don't know how you not</p> <p>5 do that. I mean, I just don't know how you</p> <p>6 do that.</p> <p>7 Q. You just don't know one way or</p> <p>8 the other?</p> <p>9 A. No, I don't know.</p> <p>10 Q. Now, isn't --</p> <p>11 A. But again --</p> <p>12 Q. You've referred to some bad</p> <p>13 things about backfilling. Isn't the good</p> <p>14 thing about it what you identify in this</p> <p>15 editorial, that it avoids destroying a bird?</p> <p>16 A. Well, no, I mean, the bird is</p> <p>17 going to have a use somewhere else. It can</p> <p>18 go in a new house. They can put in other</p> <p>19 production. They can sell the bird. They've</p> <p>20 got a number of options.</p> <p>21 Q. Well, what you say is the</p> <p>22 backfilling option, "...would avoid the</p> <p>23 destruction and waste of what otherwise was a</p> <p>24 'productive bird'." Right?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">338</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. That's the main thing that</p> <p>3 backfilling avoids. Right?</p> <p>4 MS. LEVINE: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. That's --</p> <p>9 A. The main thing that it avoids</p> <p>10 is a major disruption to the timetable that</p> <p>11 we have our reputation run on by our</p> <p>12 customers and our board members.</p> <p>13 Q. Now, in this editorial, do you</p> <p>14 say anything about how backfilling was</p> <p>15 interfering with any timetable at all?</p> <p>16 A. No, I don't think I did.</p> <p>17 Q. What you say is that</p> <p>18 backfilling would avoid the destruction and</p> <p>19 waste of what otherwise was a productive</p> <p>20 bird. Right?</p> <p>21 A. Okay.</p> <p>22 Q. That's what you said. Right?</p> <p>23 A. That's what I said.</p> <p>24 Q. And from the standpoint of</p> <p>25 animal welfare, that's a good thing to do.</p>	<p style="text-align: right;">340</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 we were trying to avoid what could have been</p> <p>3 a major health outbreak, a nightmare of a</p> <p>4 public revelation of this out in the news</p> <p>5 media. It was just awful.</p> <p>6 Q. In your editorial, do you</p> <p>7 express any concern about avoiding a major</p> <p>8 health outbreak?</p> <p>9 A. No.</p> <p>10 Q. When you talk about jamming the</p> <p>11 cages, I mean, the producers that were</p> <p>12 backfilling were still subject to the same</p> <p>13 cage space allowance guidelines under the</p> <p>14 program. Right?</p> <p>15 A. Not if they weren't a certified</p> <p>16 company.</p> <p>17 Q. But if they were a certified</p> <p>18 company --</p> <p>19 A. They couldn't do it then.</p> <p>20 Q. -- before backfilling was</p> <p>21 prohibited --</p> <p>22 A. Yes.</p> <p>23 Q. -- they couldn't jam the cages</p> <p>24 any more full --</p> <p>25 A. No.</p>
<p style="text-align: right;">339</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Right?</p> <p>3 MS. LEVINE: Objection to the</p> <p>4 form.</p> <p>5 THE WITNESS: To avoid</p> <p>6 destruction of the bird?</p> <p>7 BY MR. OLSON:</p> <p>8 Q. Yes.</p> <p>9 A. Well, if I was a bird, I</p> <p>10 wouldn't like that. So we're trying to</p> <p>11 figure out another use for it other than what</p> <p>12 they were doing. They were jeopardizing --</p> <p>13 you know -- I mean, no, you don't know what</p> <p>14 we had to go through. We had producers where</p> <p>15 they found out that, let's say, a UEP member</p> <p>16 was reducing their flock by 20,000 birds or</p> <p>17 something. So the producer, his normal</p> <p>18 disposition of normal birds would be sending</p> <p>19 them to a foul processing plant, using them</p> <p>20 for soups or something like that. But we had</p> <p>21 a few creative producers that instead bought</p> <p>22 those cheap birds, went out to farms where</p> <p>23 they didn't even have a minimum of 48 square</p> <p>24 inches, were not a certified farm and jammed</p> <p>25 the cages with all these old birds. And so</p>	<p style="text-align: right;">341</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. -- than any other producer</p> <p>3 could. Right?</p> <p>4 A. No, it had to meet the</p> <p>5 guidelines whatever point they were at.</p> <p>6 Q. But under the guidelines, you</p> <p>7 could still jam the cages. Right?</p> <p>8 A. I don't know what you're trying</p> <p>9 to get me to say here. Still jamming the</p> <p>10 cages. I mean, if they put it in at the new</p> <p>11 size requirement or wherever they're at, it</p> <p>12 isn't jamming the cages. It's just putting</p> <p>13 birds when they were allowed to backfill to</p> <p>14 fill it up to whatever point they were at in</p> <p>15 this transition.</p> <p>16 Q. Right. They were still subject</p> <p>17 to this -- just to be clear, producers who</p> <p>18 are backfilling before it was prohibited were</p> <p>19 still subject to the same cage space</p> <p>20 allowances that everyone else was subject to.</p> <p>21 Right?</p> <p>22 MS. LEVINE: Objection to the</p> <p>23 form of the question.</p> <p>24 THE WITNESS: Well, you know,</p> <p>25 they weren't the same for everybody</p>

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<p style="text-align: right;">342</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 all the time, because the age of the</p> <p>3 flocks varied. So they'd have</p> <p>4 theirs -- theirs would be -- at a</p> <p>5 certain point, they would schedule</p> <p>6 their flock so that by X and X date,</p> <p>7 that the allowable space they would</p> <p>8 have to meet in order to pass the</p> <p>9 audit.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Whatever that requirement was,</p> <p>12 whatever cage space allowance you had to give</p> <p>13 on average at any one time, even if you</p> <p>14 backfilled, you still had to meet that same</p> <p>15 requirement, whatever it was, right?</p> <p>16 A. I'm trying to read something</p> <p>17 into it that is apparently not there, but</p> <p>18 when we allowed backfilling in the beginning</p> <p>19 of the program, we didn't -- we did not</p> <p>20 realize to the extent that it would impact a</p> <p>21 phase in that we had committed to to FMI and</p> <p>22 NCCR, and McDonald's and Wendy's. By the</p> <p>23 way, all of them --</p> <p>24 Q. Let's get --</p> <p>25 MS. LEVINE: Let the witness</p>	<p style="text-align: right;">344</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 severely limit any backfill provisions.</p> <p>3 Correct?</p> <p>4 A. That was my personal opinion,</p> <p>5 even though you know how little I know about</p> <p>6 production practices, but...</p> <p>7 Q. The reason that you gave for</p> <p>8 that opinion is that it would return to the</p> <p>9 favorable market conditions we enjoyed this</p> <p>10 past spring. Correct?</p> <p>11 A. It might.</p> <p>12 Q. By favorable market conditions,</p> <p>13 that meant higher prices. Correct?</p> <p>14 A. More favorable than they're at</p> <p>15 a down period, maybe. You don't know because</p> <p>16 you don't know how many people are putting in</p> <p>17 more birds. You don't know how many people</p> <p>18 are putting in more houses.</p> <p>19 Q. Right. That's --</p> <p>20 A. You hope -- you hope with a</p> <p>21 recommendation that they make a production</p> <p>22 decision that --</p> <p>23 Q. Would yield better prices.</p> <p>24 A. Yeah.</p> <p>25 MS. LEVINE: Let the witness</p>
<p style="text-align: right;">343</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 finish the answer. Go ahead, Mr.</p> <p>3 Pope. He's in the middle of a</p> <p>4 sentence.</p> <p>5 THE WITNESS: That's all right,</p> <p>6 I'm done.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. I just want the record to be</p> <p>9 clear on this point. The certified program</p> <p>10 required at certain times that hens be</p> <p>11 allowed a certain cage space allowance.</p> <p>12 Right?</p> <p>13 A. Yes.</p> <p>14 Q. And a producer that was</p> <p>15 backfilling before it was prohibited was</p> <p>16 still subject to the same cage space</p> <p>17 allowance that every other producer was.</p> <p>18 Right?</p> <p>19 A. Yes.</p> <p>20 Q. They didn't get a special</p> <p>21 exemption from the cage space allowance?</p> <p>22 A. No.</p> <p>23 Q. Now, you as the president of</p> <p>24 UEP in August 12, 2004, recommended to the</p> <p>25 UEP members that they should eliminate or</p>	<p style="text-align: right;">345</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 answer the question. It doesn't help</p> <p>3 when the lawyer answers the question</p> <p>4 for the witness.</p> <p>5 MR. OLSON: Did you get the</p> <p>6 witness' answer to the last question?</p> <p>7 BY MR. OLSON:</p> <p>8 Q. You hope that it would yield</p> <p>9 better prices. Correct?</p> <p>10 MS. LEVINE: Objection to the</p> <p>11 form of the question. The witness can</p> <p>12 answer the question for himself.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Mr. Pope?</p> <p>15 A. Yes.</p> <p>16 - - -</p> <p>17 (Exhibit Pope-36, United Voices</p> <p>18 dated October 28, 2004, Bates</p> <p>19 RA0000363 - RA0000372, was marked for</p> <p>20 identification.)</p> <p>21 - - -</p> <p>22 BY MR. OLSON:</p> <p>23 Q. I've handed you what's been</p> <p>24 marked as Pope-36. This document is Bates</p> <p>25 stamped RA0000363 through 372. And I'll ask</p>

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<p style="text-align: right;">346</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 if you can identify it as a United Voices</p> <p>3 from October 28, 2004?</p> <p>4 A. Yes.</p> <p>5 Q. And I'm just going to ask a</p> <p>6 couple of brief -- well, actually, why don't</p> <p>7 you review, if you see on page 2 there's a</p> <p>8 heading, "Largest Attendance Ever For UEP</p> <p>9 Meeting," and it goes on for two pages. If</p> <p>10 you could just review that, please.</p> <p>11 A. Yes. (Reviewing document.)</p> <p>12 Okay.</p> <p>13 Q. So this refers to the annual</p> <p>14 meeting in 2004 that was held in New Orleans.</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it says it's the largest</p> <p>18 attendance ever for a UEP meeting?</p> <p>19 A. Yes.</p> <p>20 Q. And that included representatives</p> <p>21 from UEP. Correct?</p> <p>22 A. UEP, UEA, USDA, AEB, USEM.</p> <p>23 Q. So UEA allied member companies</p> <p>24 were represented. Correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">348</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 that the board approved a plan of action, on</p> <p>3 the next page.</p> <p>4 A. Okay.</p> <p>5 MS. LEVINE: Where are you</p> <p>6 reading?</p> <p>7 MR. OLSON: At the end of that</p> <p>8 paragraph that spills onto page 3, it</p> <p>9 says, "The Board approved the</p> <p>10 following plan of action."</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Do you see that, Mr. Pope?</p> <p>13 A. Okay.</p> <p>14 Q. That plan of action says that</p> <p>15 "Hens currently scheduled for disposal</p> <p>16 between December 1, 2004 and July 1, 2005</p> <p>17 must be disposed of four...weeks early or</p> <p>18 reduce your flock size by 5%." Right?</p> <p>19 A. Yeah.</p> <p>20 Q. That's what the board approved?</p> <p>21 A. The board approved it. Of</p> <p>22 course the word "must" is wrong because we</p> <p>23 know it's a voluntary program, so...</p> <p>24 Q. When you say it's wrong, you're</p> <p>25 not suggesting that that's not the word that</p>
<p style="text-align: right;">347</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And UEA further processors were</p> <p>3 represented. Right?</p> <p>4 A. Yes.</p> <p>5 Q. And UEA producer packers were</p> <p>6 represented. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you received a recognition</p> <p>9 at that meeting. Correct?</p> <p>10 A. I did.</p> <p>11 Q. That's what it says.</p> <p>12 A. I don't think so.</p> <p>13 Q. Well, if you just look, it</p> <p>14 says, "Al Pope, UEP's President was</p> <p>15 recognized and applauded for his industry</p> <p>16 contributions..." But that probably happens</p> <p>17 so often that they all blur together.</p> <p>18 A. No. I try to avoid those.</p> <p>19 Q. I see. At the bottom of page 2</p> <p>20 there's a sentence that says, "The issue on</p> <p>21 most everyone's mind was the industry's</p> <p>22 current economic conditions."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. That paragraph goes on to say</p>	<p style="text-align: right;">349</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was used at the time?</p> <p>3 A. No. That was probably the</p> <p>4 word. Well, I can't even say that. I mean,</p> <p>5 somebody wrote this when they got back to</p> <p>6 Atlanta. And it may have been -- but we all</p> <p>7 know, we, being the board and the staff, know</p> <p>8 that when we make these suggestions, that</p> <p>9 they're all voluntary. Nobody has to do it</p> <p>10 and we don't have a way to check if they do</p> <p>11 it.</p> <p>12 Q. But you have no reason to</p> <p>13 dispute that the word "must" is the word that</p> <p>14 was used at the time, do you?</p> <p>15 A. If it will burp you, I will say</p> <p>16 it doesn't bother me.</p> <p>17 Q. I just want to know if -- do</p> <p>18 you have a recollection of that word?</p> <p>19 A. No, I don't recollect it.</p> <p>20 Q. When we talk about disposing</p> <p>21 hens four weeks early, that disposing means</p> <p>22 essentially you slaughter them. Correct?</p> <p>23 MS. LEVINE: Objection to form.</p> <p>24 THE WITNESS: No.</p> <p>25 BY MR. OLSON:</p>

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<p style="text-align: right;">350</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. How else do you dispose of</p> <p>3 them?</p> <p>4 A. They can build additional</p> <p>5 housing. They can use them somewhere else.</p> <p>6 I mean, there's are a lot of things that they</p> <p>7 have to choose to do with it. They may</p> <p>8 choose to sell it to somebody that is a</p> <p>9 non-certified member, and they can use it. I</p> <p>10 mean, I don't know what all the options are.</p> <p>11 There are just other options besides just --</p> <p>12 disposing doesn't mean killing them.</p> <p>13 Q. Your view is that disposing</p> <p>14 doesn't mean killing the bird?</p> <p>15 A. No.</p> <p>16 Q. Do you see where it says, The</p> <p>17 subject of backfilling the cages was a point</p> <p>18 of great discussion among all the attendees?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall that discussion?</p> <p>21 A. We had it so many times, I</p> <p>22 don't remember this particular one, but...</p> <p>23 Q. At the bottom there's a</p> <p>24 reference to "UEA - Allied Membership</p> <p>25 Meeting." Do you see that?</p>	<p style="text-align: right;">352</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Put that aside.</p> <p>5 Did you attend the economic</p> <p>6 summit that was held in 2004?</p> <p>7 A. I believe I did. I think</p> <p>8 it's -- I have to look and see if I'm listed</p> <p>9 on there. But it was the one in Chicago, was</p> <p>10 it?</p> <p>11 - - -</p> <p>12 (Exhibit Pope-37, UEP Board of</p> <p>13 Directors conference call December 16,</p> <p>14 2004, Bates UE0309108 &amp; UE0309109, was</p> <p>15 marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Now you caught me without</p> <p>19 knowing the answer.</p> <p>20 A. This isn't the one you mean.</p> <p>21 Q. We'll get to that later.</p> <p>22 I've handed you what's been</p> <p>23 marked as Pope-37. This is Bates stamped</p> <p>24 UE0309108 through 109. I'll ask if you can</p> <p>25 identify this as the minutes of a UEP Board</p>
<p style="text-align: right;">351</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. It says, "UEA-Allied members</p> <p>4 continue to be extremely supportive of UEP</p> <p>5 and of assistance to the egg industry."</p> <p>6 Do you see that?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. Is that a fair statement?</p> <p>9 MS. LEVINE: Objection to form.</p> <p>10 THE WITNESS: The answer is yes,</p> <p>11 I'm sorry.</p> <p>12 BY MR. OLSON:</p> <p>13 Q. And this indicates that the UEA</p> <p>14 allied members held their annual membership</p> <p>15 meeting in New Orleans around the same time.</p> <p>16 Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And they voted to set aside</p> <p>19 \$20,000 for UEP to use on animal welfare</p> <p>20 research projects. Is that right?</p> <p>21 A. Yes.</p> <p>22 Q. They also voted to provide</p> <p>23 \$40,000 for UEP's management. Is that right?</p> <p>24 MS. LEVINE: Objection to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">353</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of Directors conference call from</p> <p>3 December 16, 2004?</p> <p>4 A. Yes.</p> <p>5 Q. And you participated in that</p> <p>6 conference call. Correct?</p> <p>7 A. I don't see the minutes from</p> <p>8 it, so I don't really know that. I doubt</p> <p>9 whether I did.</p> <p>10 Q. I'm sorry?</p> <p>11 A. I doubt whether I did.</p> <p>12 Q. You don't see what?</p> <p>13 A. I said -- well, it says I was</p> <p>14 there, so I was there.</p> <p>15 Q. This conference call is where a</p> <p>16 motion was passed where backfilling would be</p> <p>17 prohibited under the certified program.</p> <p>18 Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And there was a further motion</p> <p>21 that backfilling, as we've discussed earlier</p> <p>22 today, would be treated the same as the cage</p> <p>23 space allowance and would result in a failed</p> <p>24 audit if it occurred. Correct?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">354</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can put that aside.</p> <p>3 - - -</p> <p>4 (Exhibit Pope-38, 6/14/05</p> <p>5 Letter, Bates UE0220384, was marked</p> <p>6 for identification.)</p> <p>7 - - -</p> <p>8 BY MR. OLSON:</p> <p>9 Q. Do you recall, Mr. Pope, when</p> <p>10 the Sparboe Companies decided to withdraw</p> <p>11 from the UEP certified program?</p> <p>12 A. No.</p> <p>13 Q. I've handed you what's been</p> <p>14 marked as Pope-38. It's a document Bates</p> <p>15 stamped UE0220384. I'll ask you if you can</p> <p>16 identify it as a letter you received from Bob</p> <p>17 Sparboe?</p> <p>18 A. Yes.</p> <p>19 Q. That was sent in June 2005?</p> <p>20 A. Yes.</p> <p>21 Q. And this letter reflects that</p> <p>22 you and Mr. Sparboe had discussed the Sparboe</p> <p>23 companies withdrawing from the program?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall that discussion?</p>	<p style="text-align: right;">356</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 September 6, 2005. Is that what it is, sir?</p> <p>3 A. Yeah.</p> <p>4 Q. Just to be clear, Sparboe</p> <p>5 informed you that it was withdrawing from the</p> <p>6 certified program, but not from UEP.</p> <p>7 Correct?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question.</p> <p>10 THE WITNESS: That's what it</p> <p>11 says in his letter. He subsequently</p> <p>12 did drop their membership as well for</p> <p>13 a period of time.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. But at this time, what you had</p> <p>16 been told was that Sparboe is withdrawing</p> <p>17 from the program?</p> <p>18 A. Right.</p> <p>19 Q. And not from UEP altogether.</p> <p>20 Right?</p> <p>21 A. Right.</p> <p>22 Q. So it's still a UEP member?</p> <p>23 A. Yeah.</p> <p>24 Q. This cover letter from Mr.</p> <p>25 Sparboe refers to him informing you of</p>
<p style="text-align: right;">355</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sorry, I just don't</p> <p>3 remember whether it was at one of the</p> <p>4 breakfasts we had up in Minneapolis or</p> <p>5 whether they were on the phone. I don't</p> <p>6 remember.</p> <p>7 Q. You can put that aside.</p> <p>8 - - -</p> <p>9 (Exhibit Pope-39, 9/6/05 Letter</p> <p>10 with attachment, Bates NL002442 -</p> <p>11 NL002444, was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. OLSON:</p> <p>14 Q. Let me hand what you we've</p> <p>15 marked Pope-39. This document is Bates</p> <p>16 stamped NL002442 through 2444. I'll ask if</p> <p>17 you can identify it as a letter written to</p> <p>18 Roger Deffner by Bob Sparboe copying you and</p> <p>19 others from UEP on September 6, 2009?</p> <p>20 MS. LEVINE: I'm sorry, can you</p> <p>21 repeat that question?</p> <p>22 BY MR. OLSON:</p> <p>23 Q. I'll ask if you can identify</p> <p>24 Pope-39 as a letter written by Bob Sparboe to</p> <p>25 Roger Deffner copying you and others on</p>	<p style="text-align: right;">357</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Sparboe withdrawing from the program and</p> <p>3 receiving a letter from you outlining the</p> <p>4 procedures that would take place when a</p> <p>5 company terminates its participation in the</p> <p>6 program?</p> <p>7 A. Which is in the guidelines.</p> <p>8 Q. Okay. And the letter is</p> <p>9 attached. Right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And you sent this letter that's</p> <p>12 attached on June 10, 2005. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you outlined the procedures</p> <p>15 that would follow including certain companies</p> <p>16 being notified that Sparboe is leaving the</p> <p>17 program. Right?</p> <p>18 A. Ask me the same question again,</p> <p>19 I absolutely was not listening.</p> <p>20 Q. Fair enough.</p> <p>21 MS. LEVINE: I just want to</p> <p>22 point out for the record, you have a</p> <p>23 two-sided copy with one document.</p> <p>24 You're not suggesting that the back</p> <p>25 side is the enclosure. Do you want to</p>

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<p style="text-align: right;">358</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 clarify?</p> <p>3 MR. OLSON: That is the</p> <p>4 enclosure that is attached, yeah.</p> <p>5 MS. LEVINE: So you're</p> <p>6 representing that as an enclosure?</p> <p>7 MR. OLSON: Well, the cover</p> <p>8 letter says, "See attached letter."</p> <p>9 MS. LEVINE: And this is --</p> <p>10 MR. OLSON: Yes.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. So in your letter to Mr.</p> <p>13 Sparboe on June 10, 2005, you say, "Upon</p> <p>14 receiving notification that a company has</p> <p>15 either failed their audit or has voluntarily</p> <p>16 terminated their commitment, we notify the</p> <p>17 following."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And you -- number 1 is "All</p> <p>21 other ACC companies."</p> <p>22 A. Yes.</p> <p>23 Q. That means other certified</p> <p>24 companies. Right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">360</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 exception. The only time we ever contacted a</p> <p>3 customer would be at the request of one of</p> <p>4 our members. I am XYZ company, I've been</p> <p>5 talking to my egg buyer about the new</p> <p>6 certified program. Would you call him up and</p> <p>7 explain the program. So that's when we would</p> <p>8 do it. Otherwise, I always felt very</p> <p>9 strongly they should not be contacting any</p> <p>10 customers, period. It's too sensitive to us.</p> <p>11 We're not interested. We're not in that</p> <p>12 business, so...</p> <p>13 Q. So if you look at the cover</p> <p>14 of -- the cover letter of Pope-39, this is</p> <p>15 Mr. Sparboe's letter, and the third</p> <p>16 paragraph, he writes, "Thereafter it came to</p> <p>17 my attention that UEP staff member, Gene</p> <p>18 Gregory, contacted some of our customers,</p> <p>19 informing them of our withdrawal from the</p> <p>20 program."</p> <p>21 Do you see that?</p> <p>22 A. I see it.</p> <p>23 Q. He goes on to say Sparboe</p> <p>24 interpreted that as unethical and</p> <p>25 inappropriate. Did you investigate, sir, as</p>
<p style="text-align: right;">359</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Number 2 is "Urner Barry"?</p> <p>3 A. Yes.</p> <p>4 Q. Number 3 is "Egg Clearinghouse,</p> <p>5 Inc." Right?</p> <p>6 A. Yes.</p> <p>7 Q. You didn't tell Mr. Sparboe</p> <p>8 that you would contact Sparboe's customers to</p> <p>9 tell them anything about what Sparboe had</p> <p>10 done. Correct?</p> <p>11 MS. LEVINE: Objection to form.</p> <p>12 THE WITNESS: It was against our</p> <p>13 policy to do that.</p> <p>14 COURT REPORTER: Could you</p> <p>15 repeat that?</p> <p>16 THE WITNESS: It was against our</p> <p>17 policy to do that, to contact</p> <p>18 customers direct.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. And if you look at -- why was</p> <p>21 that against UEP's policy?</p> <p>22 A. We believe that what goes on</p> <p>23 between our member and his customer is their</p> <p>24 business and not ours. We have no right.</p> <p>25 The only -- I'm not even -- this is not an</p>	<p style="text-align: right;">361</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the UEP president --</p> <p>3 A. Yes.</p> <p>4 Q. -- whether Mr. Gregory had</p> <p>5 contacted --</p> <p>6 A. Yes.</p> <p>7 Q. And had he?</p> <p>8 A. Yes.</p> <p>9 Q. Who had he contacted?</p> <p>10 A. The customer, whoever the</p> <p>11 customer was. I don't know who it was, no.</p> <p>12 Q. Was Mr. Gregory disciplined at</p> <p>13 all for doing that?</p> <p>14 A. Well, he wasn't fired, but we</p> <p>15 renewed our commitment not to do that. It</p> <p>16 was not fair to Sparboe or anybody else. I</p> <p>17 was just adamant about us not doing that. We</p> <p>18 got a lot of calls from -- we got many calls</p> <p>19 over the last three years as we implemented</p> <p>20 this from buyers and we wouldn't know who</p> <p>21 their -- we would know who their supplier</p> <p>22 was, but we -- those calls were all people</p> <p>23 that were -- that wanted to know more about</p> <p>24 the program, that's all. They wanted to know</p> <p>25 something about the program. And so we told</p>

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<p style="text-align: right;">362</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 them.</p> <p>3 Q. Why don't you keep that in</p> <p>4 front of you in case you need it.</p> <p>5 A. Okay.</p> <p>6 - - -</p> <p>7 (Exhibit Pope-40, E-mail string,</p> <p>8 Bates UE0641382, was marked for</p> <p>9 identification.)</p> <p>10 - - -</p> <p>11 BY MR. OLSON:</p> <p>12 Q. I've handed what you we've</p> <p>13 marked as Pope-40.</p> <p>14 A. Okay.</p> <p>15 Q. This is a document Bates</p> <p>16 stamped UE0641382. And the e-mail in the</p> <p>17 middle of the page you identify as one you</p> <p>18 sent to Tim Hammonds on January 27, 2005.</p> <p>19 Correct?</p> <p>20 A. Yes.</p> <p>21 Q. So this is after Sparboe had</p> <p>22 informed you that it was withdrawing from the</p> <p>23 program?</p> <p>24 A. Yes.</p> <p>25 Q. And before Bob Sparboe sent</p>	<p style="text-align: right;">364</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the Animal Care Guidelines."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And then you go on to tell Mr.</p> <p>6 Hammonds, "This past week the Sparboe Company</p> <p>7 dropped its participation in our UEP Animal</p> <p>8 Care Certified program."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. You go on to tell him that "We</p> <p>12 have on good authority that the Sparboe</p> <p>13 company will spearhead an effort to develop a</p> <p>14 competing program, of course without the 100%</p> <p>15 provision."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And then you go on to say that</p> <p>19 you had noted that Sparboe had become</p> <p>20 associate members of FMI. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And then you say, "We would</p> <p>23 respectfully request the FMI maintains its</p> <p>24 current position of only supporting the UEP</p> <p>25 guidelines which were jointly developed with</p>
<p style="text-align: right;">363</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 this letter about --</p> <p>3 A. Yes.</p> <p>4 Q. Tim Hammonds is the gentleman</p> <p>5 from FMI. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. That's FMI, the group that</p> <p>8 represents the customers of UEP members.</p> <p>9 Correct?</p> <p>10 A. Yes.</p> <p>11 Q. So you were writing this</p> <p>12 e-mail --</p> <p>13 A. And helped us develop</p> <p>14 guidelines, yes.</p> <p>15 Q. You were writing this e-mail to</p> <p>16 the trade group that is comprised of the</p> <p>17 customers of UEP members --</p> <p>18 A. Yes.</p> <p>19 Q. -- including Sparboe. Right?</p> <p>20 A. Yes.</p> <p>21 Q. On June 27th, you wrote to Mr.</p> <p>22 Hammonds, "Greetings from Atlanta." And you</p> <p>23 go on to tell them -- you go on to say, "From</p> <p>24 day 1, the Sparboe Company has tried to</p> <p>25 destroy the industry developed program for</p>	<p style="text-align: right;">365</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 FMI."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Did you inform Sparboe that you</p> <p>6 had had that communication with FMI?</p> <p>7 A. Not that I recall.</p> <p>8 Q. All right. Let me hand you</p> <p>9 what we've marked as Pope-41.</p> <p>10 - - -</p> <p>11 (Exhibit Pope-41, 9/12/05 Letter</p> <p>12 with attachment, Bates NL002445 -</p> <p>13 NL002447, was marked for identification.)</p> <p>14 - - -</p> <p>15 MS. LEVINE: Steve, when you</p> <p>16 have a convenient stopping time, the</p> <p>17 witness has been going over an hour.</p> <p>18 MR. OLSON: Okay. That will</p> <p>19 happen soon.</p> <p>20 BY MR. OLSON:</p> <p>21 Q. Can you identify -- Well, the</p> <p>22 Bates number for Pope-41 is NL002445. Can</p> <p>23 you identify this as a letter that you and</p> <p>24 Mr. Deffner jointly wrote to Bob Sparboe on</p> <p>25 September 12, 2005?</p>

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<p style="text-align: right;">366</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. So that's after the date that</p> <p>4 you had contacted FMI --</p> <p>5 A. Yes.</p> <p>6 Q. -- and said that Sparboe --</p> <p>7 A. Yes.</p> <p>8 Q. -- had withdrawn from the</p> <p>9 program. Right?</p> <p>10 A. Well, this was after we were</p> <p>11 advised by Sparboe that Gene had called on a</p> <p>12 member of his, I mean a customer of his.</p> <p>13 Q. It's also after the date that</p> <p>14 you had contacted the trade association that</p> <p>15 represents all of --</p> <p>16 A. Well, you're saying that, and</p> <p>17 maybe it's right. I just don't -- I don't --</p> <p>18 you know, if you say that's what it is,</p> <p>19 that's what it is.</p> <p>20 MS. LEVINE: Mr. Pope, you're</p> <p>21 here to testify to your knowledge, not</p> <p>22 the lawyer's knowledge.</p> <p>23 THE WITNESS: No, I know.</p> <p>24 MS. LEVINE: If you're getting</p> <p>25 tired, just let us know. We want to</p>	<p style="text-align: right;">368</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 think any reasonable person would perceive</p> <p>3 that FMI was integral in developing UEP's</p> <p>4 guidelines. So when anything took place as</p> <p>5 it relates to the guidelines, when I met with</p> <p>6 FMI, because I'm up in D.C. every other week,</p> <p>7 I don't perceive them as a customer. They</p> <p>8 represent customers, but basically they are a</p> <p>9 trade association on these issues. So I</p> <p>10 don't know. If you are trying to catch me in</p> <p>11 saying, well, you did call on the customer,</p> <p>12 and you didn't -- no, I didn't even -- it</p> <p>13 never even dawned on me.</p> <p>14 Q. So that's the reason why you</p> <p>15 didn't tell Sparboe that you contacted FMI?</p> <p>16 A. Right.</p> <p>17 Q. Because it's a trade</p> <p>18 association and not a customer directly?</p> <p>19 A. Yeah, the same thing that he</p> <p>20 did when he met with FMI and didn't tell me.</p> <p>21 Q. You can put that aside.</p> <p>22 - - -</p> <p>23 (Exhibit Pope-42, 9/12/05 Fax,</p> <p>24 Bates NL002446 &amp; NL002447, was marked</p> <p>25 for identification.)</p>
<p style="text-align: right;">367</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 testify to only what you know.</p> <p>3 THE WITNESS: I'm 76, I'm tired</p> <p>4 all the time.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. So in Pope-41, this letter that</p> <p>7 you co-signed, you write back to Sparboe and</p> <p>8 you say, "I am not aware of what Sparboe</p> <p>9 customers to which you are referring. Our</p> <p>10 policy has been and continues to be..."</p> <p>11 A. Yes.</p> <p>12 Q. "...not to make voluntary</p> <p>13 direct contact with customers of our</p> <p>14 members."</p> <p>15 A. Yes. Yes.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. You didn't disclose that you</p> <p>19 had contacted FMI --</p> <p>20 A. Well, see --</p> <p>21 Q. -- about the situation.</p> <p>22 Correct?</p> <p>23 A. -- FMI doesn't buy any eggs, so</p> <p>24 are they a customer or not? They're a</p> <p>25 representative. Now, I perceived, and I</p>	<p style="text-align: right;">369</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 BY MR. OLSON:</p> <p>4 Q. Let me hand you what I've</p> <p>5 marked as Pope-42.</p> <p>6 A. Yes.</p> <p>7 Q. This is a document Bates</p> <p>8 stamped NL002446 through 2447.</p> <p>9 MS. SUMNER: I thought that is</p> <p>10 attached to Pope-41.</p> <p>11 THE WITNESS: It was. It was</p> <p>12 attached. This is a repeat.</p> <p>13 MS. SUMNER: The same Bates</p> <p>14 numbers.</p> <p>15 THE WITNESS: It's the same --</p> <p>16 MR. OLSON: So that's handy</p> <p>17 then. So this was attached to 41?</p> <p>18 THE WITNESS: Yeah. Uh-huh.</p> <p>19 Yeah.</p> <p>20 MS. SUMNER: Yes, it's the same</p> <p>21 Bates.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. It is what it is. So if we</p> <p>24 look at 41 --</p> <p>25 MS. LEVINE: Did you mark that</p>

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<p style="text-align: right;">370</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 document?</p> <p>3 MR. OLSON: Well, we can leave</p> <p>4 42 in, that's fine.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. If we look at 41, this is a</p> <p>7 fax -- there's a fax cover sheet that you</p> <p>8 sent to Kevin Haley on September 12, 2005.</p> <p>9 Correct?</p> <p>10 MS. LEVINE: Object.</p> <p>11 THE WITNESS: Yes.</p> <p>12 MS. LEVINE: Object to the form.</p> <p>13 It's from Kevin Haley to Al Pope.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. Yes, correct. Mr. Haley sent</p> <p>16 it to you on that date. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. What is Mr. Haley relaying to</p> <p>19 you on this date?</p> <p>20 A. He's reconfirming our -- the</p> <p>21 position that UEP has had as it relates to</p> <p>22 contacting customers.</p> <p>23 Q. Just for the sake of</p> <p>24 completeness, when you told Mr. Hammonds of</p> <p>25 FMI that Sparboe had left the program, did</p>	<p style="text-align: right;">372</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: The time is</p> <p>3 approximately 4:33 p.m. This ends</p> <p>4 tape five. We are now off the record.</p> <p>5 - - -</p> <p>6 (A recess was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 approximately 4:44 p.m. This begins</p> <p>10 tape six. We are back on the record.</p> <p>11 BY MR. OLSON:</p> <p>12 Q. Mr. Pope, did you ever contact</p> <p>13 Walmart to encourage them to buy eggs only</p> <p>14 from animal -- or only from certified</p> <p>15 producers?</p> <p>16 A. No.</p> <p>17 Q. Did you ever contact an</p> <p>18 organization called The Canada Egg Marketing</p> <p>19 Agency to encourage them to buy from</p> <p>20 certified producers as opposed to Sparboe?</p> <p>21 A. Not that I'm aware. We have a,</p> <p>22 I think a special relationship with Canadian</p> <p>23 Egg Marketing Agency, because one side or the</p> <p>24 other certainly affects their marketplace.</p> <p>25 And so we've extended the courtesy of CEMA to</p>
<p style="text-align: right;">371</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you direct him that he should not share that</p> <p>3 with his membership?</p> <p>4 A. I didn't do that. I would -- I</p> <p>5 would find it highly suspect that he would</p> <p>6 send something like that to his members.</p> <p>7 Q. Now, Mr. Pope, how are you</p> <p>8 compensated as president of UEP?</p> <p>9 A. How come what?</p> <p>10 Q. How were you compensated?</p> <p>11 MS. LEVINE: As president of</p> <p>12 UEP.</p> <p>13 THE WITNESS: I was on a salary.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. Salary. Did -- upon your</p> <p>16 retirement, did you have a pension with UEP?</p> <p>17 A. I did. I don't now. I mean,</p> <p>18 I've moved it. I've moved the 401(k), I</p> <p>19 moved it out, but was just a standard 401(k).</p> <p>20 Q. And since the date that you</p> <p>21 retired as UEP president, have you done any</p> <p>22 consulting or other work for UEP or any of</p> <p>23 its members?</p> <p>24 A. No.</p> <p>25 MR. OLSON: Let's take a break.</p>	<p style="text-align: right;">373</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 attend some of our board meetings. Some they</p> <p>3 come, some they don't. Then I see the same</p> <p>4 people at the International Egg Commission</p> <p>5 meeting.</p> <p>6 MR. OLSON: That's all I have</p> <p>7 for you as of now subject to follow up</p> <p>8 based on questions from your counsel.</p> <p>9 Thanks for your time today.</p> <p>10 THE WITNESS: You bet. Thanks.</p> <p>11 MS. LEVINE: Mr. Olson, before</p> <p>12 the other questions, there was one</p> <p>13 question that I objected to on the</p> <p>14 basis of privilege that I'm going to</p> <p>15 withdraw the objection. If you would</p> <p>16 like the opportunity to ask that</p> <p>17 question, I'm going to find it, I'm</p> <p>18 going to read you your question, then</p> <p>19 you -- and if you want to ask the</p> <p>20 witness the question, you can ask him.</p> <p>21 MR. OLSON: Do you happen to</p> <p>22 know what document?</p> <p>23 MS. LEVINE: It's not a</p> <p>24 document.</p> <p>25 MS. SUMNER: It is. It's</p>

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<p style="text-align: right;">374</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Exhibit Number 5.</p> <p>3 MS. LEVINE: But it wasn't</p> <p>4 having to do with it. It was in the</p> <p>5 context, but it wasn't -- it was a</p> <p>6 general document --</p> <p>7 MR. OLSON: Oh, that one.</p> <p>8 MS. LEVINE: It was a general</p> <p>9 question. So your question is, "Did</p> <p>10 UEP receive other memoranda, to your</p> <p>11 knowledge, other than the ones in this</p> <p>12 Exhibit 5 regarding legal issues</p> <p>13 related to UEP's compliance with the</p> <p>14 Capper-Volstead Act?" I'll get out</p> <p>15 Number 5.</p> <p>16 BY MR. OLSON:</p> <p>17 Q. You can answer.</p> <p>18 A. I don't know. I mean, I don't</p> <p>19 understand the question, I guess. I'm not</p> <p>20 sure what the question is. Okay. So this</p> <p>21 one here -- okay. So now I'm back on the</p> <p>22 page. All right. What was the question?</p> <p>23 MS. LEVINE: Hold on. Let's get</p> <p>24 the exhibit out. I don't have my</p> <p>25 exhibit. Hold on.</p>	<p style="text-align: right;">376</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 might have been.</p> <p>3 MS. LEVINE: And, Mr. Olson, you</p> <p>4 also asked a question about UE0153457,</p> <p>5 and it's a two-page document, and UEP</p> <p>6 has redacted that document, but you</p> <p>7 had a question about Paul Bahan. We</p> <p>8 stand by our privilege objection.</p> <p>9 However, if you want to ask him the</p> <p>10 question you had about Paul Bahan with</p> <p>11 an agreement that allowing you to ask</p> <p>12 the question here today for efficiency</p> <p>13 purpose is not a waiver of UEP's</p> <p>14 objection, I would allow you to ask it</p> <p>15 if at such time you move and there</p> <p>16 needs to be further follow up, we can</p> <p>17 do it now, with that agreement only.</p> <p>18 MR. OLSON: I understand the</p> <p>19 part about there not being a waiver.</p> <p>20 What's the other part? Oh, if there</p> <p>21 needs to be further follow up from</p> <p>22 this witness?</p> <p>23 MS. LEVINE: If you decide to</p> <p>24 move, we will have a professional</p> <p>25 debate about privilege. And if the</p>
<p style="text-align: right;">375</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 I'm just going to -- Steve, if</p> <p>3 it's okay, I'm just going to read from</p> <p>4 your question from the transcript.</p> <p>5 MR. OLSON: Sure. And just can</p> <p>6 I just reorient him that this is the</p> <p>7 document we discussed earlier that has</p> <p>8 two memos from Irving Isaacson about</p> <p>9 the Capper-Volstead Act.</p> <p>10 MS. LEVINE: This is Mr. Olson's</p> <p>11 question, "Did UEP receive other</p> <p>12 memoranda, to your knowledge, other</p> <p>13 than the ones in this Exhibit 5</p> <p>14 regarding legal issues related to</p> <p>15 UEP's compliance with the</p> <p>16 Capper-Volstead Act?"</p> <p>17 THE WITNESS: To my knowledge,</p> <p>18 no.</p> <p>19 MS. LEVINE: One more</p> <p>20 clarification, Mr. Olson --</p> <p>21 THE WITNESS: It's hard to say</p> <p>22 because it was -- you know, he was</p> <p>23 there for 30 years, so you're asking</p> <p>24 me about one here and I'm just saying</p> <p>25 I don't recall any others, but there</p>	<p style="text-align: right;">377</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 judge allows further questioning,</p> <p>3 we'll have that questioning now. If</p> <p>4 the judge does not allow it, this</p> <p>5 question will not be a part of the</p> <p>6 record. In other words, I'm allowing</p> <p>7 you to ask your questions now. If the</p> <p>8 judge is allowing the questions, you</p> <p>9 will have had them and you do not have</p> <p>10 to fly down to Atlanta, we will not</p> <p>11 produce witness again. But if the</p> <p>12 judge does not allow the questioning,</p> <p>13 these questions and answers will be</p> <p>14 stricken from this lawsuit because the</p> <p>15 judge stood by the privilege</p> <p>16 assertion.</p> <p>17 MR. OLSON: I'm not exactly sure</p> <p>18 what stricken from the lawsuit means,</p> <p>19 but if the judge doesn't allow the</p> <p>20 questioning, then I assume it won't</p> <p>21 come into the record.</p> <p>22 MS. LEVINE: We'll make this</p> <p>23 part of the record highly</p> <p>24 confidential. Stamp this highly</p> <p>25 confidential, this part of the record.</p>

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<p style="text-align: right;">378</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Can I read the</p> <p>3 language that I have in the</p> <p>4 un-redacted version that I wanted to</p> <p>5 ask about?</p> <p>6 MS. LEVINE: Yes, the two</p> <p>7 sentences about Paul Bahan.</p> <p>8 MR. OLSON: I believe it's just</p> <p>9 one sentence.</p> <p>10 MS. LEVINE: One sentence. And</p> <p>11 I'm going to hand the witness the</p> <p>12 document.</p> <p>13 MR. OLSON: He probably already</p> <p>14 has it, but that's fine.</p> <p>15 MS. SUMNER: I think he has a</p> <p>16 redacted.</p> <p>17 MS. LEVINE: He has a redacted.</p> <p>18 MR. OLSON: You're handing him</p> <p>19 the un-redacted.</p> <p>20 MS. LEVINE: It's UEP's</p> <p>21 privilege, so it's okay.</p> <p>22 BY MR. OLSON:</p> <p>23 Q. So this is -- we're talking</p> <p>24 about an un-redacted version of Exhibit 14, I</p> <p>25 believe. Yes, Exhibit 14. This is a special</p>	<p style="text-align: right;">380</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 question that's on the table.</p> <p>3 THE WITNESS: That's the only</p> <p>4 question. Okay.</p> <p>5 MR. OLSON: Should I pass the</p> <p>6 witness at this time?</p> <p>7 MS. LEVINE: Yes.</p> <p>8 MR. OLSON: I'll pass the</p> <p>9 witness subject to any follow up</p> <p>10 that's necessary. Thank you.</p> <p>11 MS. LEVINE: That just means</p> <p>12 they're moving counsel.</p> <p>13 THE WITNESS: Oh, okay.</p> <p>14 MR. OLSON: We can go off the</p> <p>15 record.</p> <p>16 VIDEOGRAPHER: The time is</p> <p>17 approximately 4:52 p.m. We're off the</p> <p>18 record.</p> <p>19 - - -</p> <p>20 (A recess was taken.)</p> <p>21 - - -</p> <p>22 VIDEOGRAPHER: The time is</p> <p>23 approximately 4:53 p.m. We are back</p> <p>24 on the record.</p> <p>25 - - -</p>
<p style="text-align: right;">379</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 called UEP marketing conference call dated</p> <p>3 September 24, 2001?</p> <p>4 A. Yes. Uh-huh.</p> <p>5 Q. All right. So I started to ask</p> <p>6 you earlier about something in the minutes on</p> <p>7 the second page that says -- where it says,</p> <p>8 Paul Bahan, is that how you say his name?</p> <p>9 A. Bahan.</p> <p>10 Q. Paul Bahan suggested that we</p> <p>11 might be able to use the animal welfare space</p> <p>12 density recommendations as justification for</p> <p>13 a flock reduction without it being a legal</p> <p>14 problem. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall Mr. Bahan making</p> <p>17 that suggestion?</p> <p>18 A. No.</p> <p>19 Q. Do you recall the discussion</p> <p>20 that followed about that suggestion?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 A. And another question that you</p> <p>24 had asked --</p> <p>25 MS. LEVINE: That's the only</p>	<p style="text-align: right;">381</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 EXAMINATION</p> <p>3 - - -</p> <p>4 BY MR. SLIDDERS:</p> <p>5 Q. Good afternoon, Mr. Pope.</p> <p>6 A. Good afternoon.</p> <p>7 Q. My name is Charles Slidders.</p> <p>8 A. Representing?</p> <p>9 Q. The Indirect Purchaser</p> <p>10 Plaintiffs. I know it's been a long day for</p> <p>11 you, sir.</p> <p>12 A. Thank you.</p> <p>13 Q. I know that you've given</p> <p>14 truthful and accurate advice, testimony</p> <p>15 throughout the day.</p> <p>16 A. Yes.</p> <p>17 Q. Are you able to continue to</p> <p>18 give truthful advice?</p> <p>19 A. Yes.</p> <p>20 Q. There's nothing preventing you</p> <p>21 from doing so?</p> <p>22 A. No.</p> <p>23 Q. If I could just ask to -- what</p> <p>24 is Urner Barry?</p> <p>25 A. Urner Barry is an organization</p>

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<p style="text-align: right;">382</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 for 100 years that has been a market</p> <p>3 reporter. And he gets up every morning and</p> <p>4 he calls a couple of dozen people, chain</p> <p>5 stores, he asks them what they pay for eggs.</p> <p>6 They lie to him a couple of cents. Then he</p> <p>7 calls the producers and he gets an idea of</p> <p>8 what they're selling them for. They add a</p> <p>9 couple of cents. He puts it all together and</p> <p>10 he comes out with what today's quote is on</p> <p>11 eggs after he's done. So -- and he's been</p> <p>12 doing that for a hundred years. You would</p> <p>13 think that we would use some other form of</p> <p>14 price discovery, but that's what producers</p> <p>15 have been using. They've been doing it for a</p> <p>16 hundred years, they don't want to change. So</p> <p>17 they usually use it as a barometer by which</p> <p>18 to approach their customers and sell them in</p> <p>19 relationship, some relationship to Urner</p> <p>20 Barry. I don't know what.</p> <p>21 Q. So is Urner Barry the industry</p> <p>22 standard for cost discovery?</p> <p>23 A. Yes, they do fish, they do</p> <p>24 turkeys, they do, you know, a lot of items.</p> <p>25 Q. Did the UEP receive or</p>	<p style="text-align: right;">384</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. SLIDDERS: That's</p> <p>3 Exhibit 44. That's Bates numbered</p> <p>4 UE0170130.</p> <p>5 BY MR. SLIDDERS:</p> <p>6 Q. If you could quickly have a</p> <p>7 look at those documents.</p> <p>8 A. Yes.</p> <p>9 Q. Are they typical Urner Barry</p> <p>10 reports?</p> <p>11 A. Yes.</p> <p>12 Q. Could you just look at --</p> <p>13 A. I think most people in the</p> <p>14 industry all do it by phone and e-mails now.</p> <p>15 This -- I don't even know if they're still</p> <p>16 publishing it. Maybe they are. But these</p> <p>17 are 2000, 2001. I'm not even sure they're</p> <p>18 publishing these anymore.</p> <p>19 Q. In the middle of those -- these</p> <p>20 two documents. In the middle of the front</p> <p>21 page, the middle column under the title "EGG</p> <p>22 SITUATION," it says, "Retail Demand Slowing</p> <p>23 Market Adjusting to Increasing Supply."</p> <p>24 A. Yeah.</p> <p>25 Q. And then it says, "Retail</p>
<p style="text-align: right;">383</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 subscribe to and received Urner Barry's price</p> <p>3 current reports?</p> <p>4 A. No.</p> <p>5 Q. Are you familiar with the --</p> <p>6 A. Yes. Uh-huh.</p> <p>7 Q. If I could just tender</p> <p>8 Exhibit 43.</p> <p>9 - - -</p> <p>10 (Exhibit Pope-43, Urner Barry</p> <p>11 report, Bates UE0170418 - UE0170429,</p> <p>12 was marked for identification.)</p> <p>13 - - -</p> <p>14 MR. SLIDDERS: I'll give you</p> <p>15 three of these documents.</p> <p>16 If we can just read into the</p> <p>17 record the Bates numbers for those two</p> <p>18 documents. I think number 43, the</p> <p>19 Bates number is UE0170418 to</p> <p>20 EU0170429.</p> <p>21 - - -</p> <p>22 (Exhibit Pope-44, Urner Barry</p> <p>23 report, Bates UE0170130 - UE0170141,</p> <p>24 was marked for identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">385</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Demand Fair Supplies Available Market</p> <p>3 Adjusting."</p> <p>4 A. Yes.</p> <p>5 Q. So does Urner Barry report on</p> <p>6 retail issues?</p> <p>7 MS. LEVINE: Objection to the</p> <p>8 form of the question.</p> <p>9 THE WITNESS: Well, yeah, he</p> <p>10 calls -- I mean, I explained that he</p> <p>11 calls a company, Kroger, calls the</p> <p>12 buyer at Kroger and says, are you</p> <p>13 getting any increased demand or</p> <p>14 decreased demand. So from that</p> <p>15 standpoint, then he's a market</p> <p>16 evaluator or something like that.</p> <p>17 BY MR. SLIDDERS:</p> <p>18 Q. Okay. So they report on retail</p> <p>19 issues?</p> <p>20 A. Yes.</p> <p>21 Q. If I could just --</p> <p>22 A. Could you define -- I'm trying</p> <p>23 to define what customers you represent. I</p> <p>24 don't remember what that is. What did you</p> <p>25 say you represent?</p>

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<p style="text-align: right;">386</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. The Indirect Purchaser</p> <p>3 Plaintiffs.</p> <p>4 A. Who is that? Who is the</p> <p>5 Indirect Purchaser Plaintiffs?</p> <p>6 Q. We're like the end purchasers</p> <p>7 of eggs.</p> <p>8 A. The end purchasers. So it</p> <p>9 could be a consumer. It could be Kraft. It</p> <p>10 could be --</p> <p>11 Q. Well, no.</p> <p>12 A. Why? You're the end purchaser</p> <p>13 of eggs.</p> <p>14 Q. If we just leave it to I'll ask</p> <p>15 the question and discuss it at some other</p> <p>16 time.</p> <p>17 If I could just tender another</p> <p>18 document.</p> <p>19 - - -</p> <p>20 (Exhibit Pope-45, Shell Egg</p> <p>21 Marketing Committee May 14, 2002,</p> <p>22 Bates CM00190223 - CM00190239, was</p> <p>23 marked for identification.)</p> <p>24 - - -</p> <p>25 BY MR. SLIDDERS:</p>	<p style="text-align: right;">388</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 during that call.</p> <p>3 A. Well, it says I was, but from a</p> <p>4 contributing standpoint, I don't contribute</p> <p>5 very much to it. I mean, I listen to it,</p> <p>6 that's about it.</p> <p>7 Q. There's no reason to suggest</p> <p>8 that you weren't on that call?</p> <p>9 A. No.</p> <p>10 Q. Now, Dolph Baker was the</p> <p>11 chairman at the time. If you could just read</p> <p>12 the next paragraph. Baker stated that the</p> <p>13 purpose of the call was to discuss the</p> <p>14 post-Easter egg market. What happens to eggs</p> <p>15 after Easter typically?</p> <p>16 A. Typically we're in -- you know,</p> <p>17 we've built up our demand, we scheduled our</p> <p>18 flock so they're peaking in March and April,</p> <p>19 and then Easter comes and the demand takes a</p> <p>20 dramatic drop down. And historically, this</p> <p>21 is when the breakers would come in and buy</p> <p>22 eggs at that time, a lot more than just</p> <p>23 usual.</p> <p>24 Q. So he says -- goes on to say,</p> <p>25 "Based upon history we could expect a major</p>
<p style="text-align: right;">387</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Mr. Pope, I've just handed you</p> <p>3 a document entitled Exhibit 45.</p> <p>4 A. Okay.</p> <p>5 Q. Now -- sorry, just have some</p> <p>6 copies.</p> <p>7 MS. LEVINE: What number is</p> <p>8 this?</p> <p>9 MR. SLIDDERS: 45.</p> <p>10 BY MR. SLIDDERS:</p> <p>11 Q. Can you identify that document?</p> <p>12 A. Yeah, it appears to be a copy</p> <p>13 of our meeting in Washington, D.C. in 2002.</p> <p>14 Q. Now, if we could just turn to</p> <p>15 the third page of that document, the page</p> <p>16 numbers are not named, but it's CM00190225.</p> <p>17 A. Okay.</p> <p>18 Q. Now, that refers to a "UEP</p> <p>19 Marketing Committee Meeting Conference Call"</p> <p>20 dated March 11, 2002?</p> <p>21 A. Okay.</p> <p>22 Q. Do you recall that conference</p> <p>23 call?</p> <p>24 A. No.</p> <p>25 Q. It lists you as being present</p>	<p style="text-align: right;">389</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 market adjustment downward after Easter."</p> <p>3 A. Yes.</p> <p>4 Q. Then he goes on to say, "Some</p> <p>5 forecasters were estimating that the market</p> <p>6 could go as low as 55 cents for large eggs."</p> <p>7 A. Right. Uh-huh.</p> <p>8 Q. What process is he referring to</p> <p>9 there?</p> <p>10 MS. LEVINE: Objection to the</p> <p>11 form of the question. The witness</p> <p>12 said he didn't remember this document.</p> <p>13 THE WITNESS: When he refers to</p> <p>14 a price there, without -- I mean, when</p> <p>15 he -- he's just sitting in a</p> <p>16 conversation, he makes his price, he's</p> <p>17 referring to an Urner Barry price,</p> <p>18 because that's kind of just -- that's</p> <p>19 the one everybody looks at.</p> <p>20 BY MR. SLIDDERS:</p> <p>21 Q. That's the price everyone looks</p> <p>22 at?</p> <p>23 A. Yeah.</p> <p>24 Q. Then he goes on to say that we</p> <p>25 all know May to July are historically poor</p>

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<p style="text-align: right;">390</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 months so why not make some supply</p> <p>3 adjustments.</p> <p>4 A. Right. Uh-huh.</p> <p>5 Q. What does -- can I ask you,</p> <p>6 sir, what do you think he means by</p> <p>7 "historically poor months"?</p> <p>8 MS. LEVINE: Objection to the</p> <p>9 form of the question.</p> <p>10 MR. McKENNEY: Objection to the</p> <p>11 form. Lack of foundation. Calls for</p> <p>12 speculation.</p> <p>13 COURT REPORTER: Who was that,</p> <p>14 please?</p> <p>15 MR. OLSON: Who's on the phone?</p> <p>16 MR. McKENNEY: Jason McKenney on</p> <p>17 behalf of Cal-Maine Foods.</p> <p>18 THE WITNESS: I think here</p> <p>19 you've got to ask Dolph Baker, he's</p> <p>20 the chairman of the committee. And,</p> <p>21 you know, they're making</p> <p>22 recommendations or they're talking</p> <p>23 economics which we -- the whole</p> <p>24 industry does at UEP meetings for</p> <p>25 years and years, it's just another</p>	<p style="text-align: right;">392</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 1.</p> <p>3 MS. LEVINE: What page?</p> <p>4 BY MR. SLIDDERS:</p> <p>5 Q. On page 2. Now, this is a</p> <p>6 reflection of the monthly egg prices from</p> <p>7 1982 to 2005. Correct?</p> <p>8 MS. LEVINE: Objection to the</p> <p>9 form of the question. If this witness</p> <p>10 knows, he's familiar with this</p> <p>11 document.</p> <p>12 THE WITNESS: This is the first</p> <p>13 time I've seen the chart. I mean, I</p> <p>14 know -- I see that it went by my desk,</p> <p>15 but I just -- it just blows my mind to</p> <p>16 look at numbers like this. I have no</p> <p>17 idea -- now, there are guys in the</p> <p>18 industry that are very statistical</p> <p>19 oriented. So when they get the USDA</p> <p>20 figures, they go over them with a fine</p> <p>21 tooth comb. Me, I have no idea.</p> <p>22 BY MR. SLIDDERS:</p> <p>23 Q. Now, just look at the first</p> <p>24 table, though. We can scan down, go to 2002.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">391</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 time. And we hope that it helps</p> <p>3 members make decisions.</p> <p>4 MR. SLIDDERS: If I put Exhibit</p> <p>5 46.</p> <p>6 - - -</p> <p>7 (Exhibit Pope-46, U.S. Farm and</p> <p>8 Retail Egg Price Relationships - 1982</p> <p>9 to 2005, Bates UE0155821 - UE0155831,</p> <p>10 was marked for identification.)</p> <p>11 - - -</p> <p>12 BY MR. SLIDDERS:</p> <p>13 Q. Can you identify this document</p> <p>14 for us? I'm sorry, this document is Bates</p> <p>15 numbered UE0155821 to UE0155831.</p> <p>16 A. Okay.</p> <p>17 Q. Can you identify this document?</p> <p>18 A. It's one put out by USDA.</p> <p>19 Q. It's "U.S. Farm and Retail Egg</p> <p>20 Price Relationships - 1982 to 2005."</p> <p>21 A. Uh-huh.</p> <p>22 Q. If you look down the bottom</p> <p>23 it's prepared by Don Bell.</p> <p>24 A. Okay.</p> <p>25 Q. If we could just turn to Figure</p>	<p style="text-align: right;">393</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. March to April.</p> <p>3 A. Okay.</p> <p>4 Q. Now, there's prices 0.515 and</p> <p>5 then 4.321. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. Now, that's the farm prices,</p> <p>8 the farm egg prices. Is that correct?</p> <p>9 MS. LEVINE: Objection to the</p> <p>10 form of the question. The witness</p> <p>11 just told you he doesn't remember the</p> <p>12 document, he doesn't look at figures.</p> <p>13 I don't really think it's appropriate</p> <p>14 to read a chart.</p> <p>15 BY MR. SLIDDERS:</p> <p>16 Q. Is that consistent with the</p> <p>17 fall of egg prices after Easter?</p> <p>18 MS. LEVINE: Objection to the</p> <p>19 form of the question. If the witness</p> <p>20 knows sitting here today in 2013 about</p> <p>21 a 2005 document.</p> <p>22 THE WITNESS: And I know very</p> <p>23 little about production. See up here</p> <p>24 they -- USDA does it different than</p> <p>25 the rest of the industry. We've got</p>

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<p style="text-align: right;">394</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 non-processed eggs. That means when</p> <p>3 they're non-processed, they're not in</p> <p>4 the carton, they aren't in a flat,</p> <p>5 they're just coming out of the chicken</p> <p>6 house. So it's -- I guess we would</p> <p>7 call a farm gate price. And then you</p> <p>8 have all the processing and other</p> <p>9 things on top of it. And then that</p> <p>10 would be what we would consider the</p> <p>11 Urner Barry price I guess.</p> <p>12 MS. LEVINE: We don't want you</p> <p>13 to guess, Mr. Pope.</p> <p>14 THE WITNESS: I am guessing.</p> <p>15 I'm guessing on all of this.</p> <p>16 MS. LEVINE: Okay. You're</p> <p>17 guessing --</p> <p>18 THE WITNESS: I don't know a</p> <p>19 thing about the economics.</p> <p>20 BY MR. SLIDDERS:</p> <p>21 Q. Neither do I.</p> <p>22 A. Yeah.</p> <p>23 Q. Trust me. If we could just go</p> <p>24 down and look at the next table, Table 2,</p> <p>25 which is entitled, "Retail Egg Prices." Then</p>	<p style="text-align: right;">396</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Pope.</p> <p>3 MS. ANDERSON: We like voids,</p> <p>4 Mr. Pope.</p> <p>5 - - -</p> <p>6 (Exhibit Pope-47, 3/24/04 E-mail</p> <p>7 with attachment, Bates UE0880125 -</p> <p>8 UE0880127, was marked for</p> <p>9 identification.)</p> <p>10 - - -</p> <p>11 BY MR. SLIDDERS:</p> <p>12 Q. Pass you another exhibit, mark</p> <p>13 it Pope-47. For the record, this document is</p> <p>14 Bates numbered UE0880125 through to</p> <p>15 UE0880127. Can you identify this document,</p> <p>16 Mr. Pope?</p> <p>17 A. Yeah. It was obviously a</p> <p>18 communication between Don Bell and myself and</p> <p>19 Gene. And he sent it to me as a courtesy,</p> <p>20 and also I read it, but basically I would</p> <p>21 leave it to Gene, Gene does the economics and</p> <p>22 he also does the newsletter which is where</p> <p>23 this would go. And if there was any</p> <p>24 commentary on it, Gene might make commentary</p> <p>25 on it.</p>
<p style="text-align: right;">395</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 if you go down to 2002 again, and see the</p> <p>3 price from April, 1.047, to May, 0.997.</p> <p>4 A. Uh-huh.</p> <p>5 Q. As you sit here today and</p> <p>6 reflect on your time as president of the UEP,</p> <p>7 is that consistent with the fall in egg</p> <p>8 prices after Easter?</p> <p>9 A. I don't know. I mean, I have</p> <p>10 to look at it longer than here to even give</p> <p>11 you an opinion, and then it would be</p> <p>12 certainly not an educated opinion.</p> <p>13 Q. Okay. No problem.</p> <p>14 A. I do want to answer for you, if</p> <p>15 I can.</p> <p>16 Q. I understand, sir.</p> <p>17 A. Can you imagine all this stuff</p> <p>18 Don Bell doing during a board meeting and</p> <p>19 going over all these numbers?</p> <p>20 MS. LEVINE: There's no question</p> <p>21 on the table.</p> <p>22 THE WITNESS: Well, I'm just</p> <p>23 taking -- there's a little void. I</p> <p>24 don't like voids.</p> <p>25 MS. LEVINE: We've noticed, Mr.</p>	<p style="text-align: right;">397</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you recall seeing this</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. Now, at the top of the report</p> <p>6 under where it says, "Don Bell's Table Egg</p> <p>7 Layer Flock Projections and Economic</p> <p>8 Commentary." It says, "This report is</p> <p>9 written by Don Bell, University of California</p> <p>10 Poultry Specialist, emeritus, under the</p> <p>11 sponsorship of United Egg Producers."</p> <p>12 A. Okay.</p> <p>13 Q. So did the United Egg Producers</p> <p>14 pay Don Bell for this report?</p> <p>15 A. We have from time to time. It</p> <p>16 would always be on a -- you know, when we ask</p> <p>17 for a report, we -- they never tell us how</p> <p>18 much. We just send a couple hundred dollars</p> <p>19 or something, about what it amounted to.</p> <p>20 Q. Now, the document refers to the</p> <p>21 significant price increases between -- if you</p> <p>22 could just familiarize yourself with the</p> <p>23 document for a second -- for a moment. And</p> <p>24 then have you had a chance to look at it?</p> <p>25 A. This one here?</p>

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<p style="text-align: right;">398</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. The second page.</p> <p>3 A. Yeah. Okay.</p> <p>4 Q. Now, it refers -- is it fair to</p> <p>5 say it refers to significant price increases</p> <p>6 between 2003, and I quote from the second</p> <p>7 paragraph, "Annual egg price increases</p> <p>8 between 2002 and 2003 were estimated by the</p> <p>9 USDA to average 17.4 cents/dozen." The start</p> <p>10 of the paragraph it says, "We are all aware</p> <p>11 of the extremely high (record high) egg</p> <p>12 prices that occurred in late November/early</p> <p>13 December of 2003."</p> <p>14 MS. LEVINE: Is there a question</p> <p>15 on the table?</p> <p>16 BY MR. SLIDDERS:</p> <p>17 Q. If we could just go to the</p> <p>18 third paragraph, "There are many theories</p> <p>19 about why prices exceeded everyone's</p> <p>20 expectations, but we believe they were</p> <p>21 affected by a combination of supply and</p> <p>22 demand circumstances that elevated prices</p> <p>23 beyond historical experience."</p> <p>24 Now, when Mr. Bell refers to</p> <p>25 "supply and demand circumstances," in your</p>	<p style="text-align: right;">400</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. It's interesting --</p> <p>3 MS. LEVINE: There's no question</p> <p>4 on the table, Mr. Pope.</p> <p>5 BY MR. SLIDDERS:</p> <p>6 Q. These are references to retail</p> <p>7 prices. Is that correct?</p> <p>8 MS. LEVINE: Object to the form</p> <p>9 of the question.</p> <p>10 THE WITNESS: Don has made some,</p> <p>11 yeah.</p> <p>12 BY MR. SLIDDERS:</p> <p>13 Q. He goes on to say, "The result</p> <p>14 was: a huge improvement in industry revenue</p> <p>15 of ONE BILLION DOLLARS (or more)..."</p> <p>16 Now, is it correct to say that</p> <p>17 the increased retail prices in 2003 result in</p> <p>18 increased revenue for egg producers who are</p> <p>19 farmers?</p> <p>20 MS. LEVINE: Objection to the</p> <p>21 form of the question. I think this</p> <p>22 witness has told you time and time</p> <p>23 again --</p> <p>24 MR. SLIDDERS: Not me.</p> <p>25 MS. LEVINE: -- he doesn't</p>
<p style="text-align: right;">399</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 experience, what does he mean?</p> <p>3 MS. LEVINE: Objection to the</p> <p>4 form of the question.</p> <p>5 THE WITNESS: I don't know, you</p> <p>6 have to ask Don. This stuff to me is</p> <p>7 just like looking in my computer which</p> <p>8 I have trouble getting e-mails off of.</p> <p>9 I didn't talk to Don about this. I</p> <p>10 think Don was probably solicited by</p> <p>11 myself or Gene to explain to our</p> <p>12 members what's going on economically.</p> <p>13 That's all he was doing.</p> <p>14 BY MR. SLIDDERS:</p> <p>15 Q. Okay. Then if you go to the</p> <p>16 last half of that paragraph, it says, "Demand</p> <p>17 was especially strong as evidenced by the</p> <p>18 consumer's willingness to buy the same amount</p> <p>19 of product for significantly higher prices."</p> <p>20 A. Yes.</p> <p>21 Q. "Consumer prices of less than</p> <p>22 \$1 per dozen may have become a thing of the</p> <p>23 past. Annual retail prices for 2003 were</p> <p>24 reported to be \$1.25 per dozen for the year</p> <p>25 and \$1.55 for December for the U.S." Now --</p>	<p style="text-align: right;">401</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 remember this document, he doesn't</p> <p>3 know about economics. You're just</p> <p>4 reading from it, I think there is a</p> <p>5 better witness for you.</p> <p>6 MR. SLIDDERS: I understand.</p> <p>7 BY MR. SLIDDERS:</p> <p>8 Q. In your experience?</p> <p>9 A. I gave you my experience. It</p> <p>10 goes down after Easter. We try to encourage</p> <p>11 producers to balance their supplies with</p> <p>12 demand. But as you can see, sometimes they</p> <p>13 do and sometimes they don't. And I sure as</p> <p>14 hell know it isn't just because UEP is asking</p> <p>15 them to. They do it because when you get</p> <p>16 economic costs of \$0.42 to produce a dozen</p> <p>17 eggs, you're losing enough money that you</p> <p>18 might listen to something. But it is an area</p> <p>19 that I'm very weak in and that's why I always</p> <p>20 had somebody that knew a lot more than I did</p> <p>21 about statistics and actually about chickens.</p> <p>22 MR. SLIDDERS: Mr. Pope, I have</p> <p>23 no further questions.</p> <p>24 THE WITNESS: Thank you. Sorry</p> <p>25 if I didn't answer them the way you --</p>

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<p style="text-align: right;">402</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 you know, fully, because I would like</p> <p>3 to do that with anybody.</p> <p>4 MR. SLIDDERS: I understand, Mr.</p> <p>5 Pope.</p> <p>6 THE WITNESS: Especially with --</p> <p>7 if I have some representatives here</p> <p>8 from my customers, industry customers.</p> <p>9 MR. SLIDDERS: Can we just go</p> <p>10 off the record?</p> <p>11 VIDEOGRAPHER: The time is</p> <p>12 approximately 5:14 p.m. We're off the</p> <p>13 record.</p> <p>14 - - -</p> <p>15 (A recess was taken.)</p> <p>16 - - -</p> <p>17 VIDEOGRAPHER: The time is</p> <p>18 approximately 5:40 p.m. We are back</p> <p>19 on the record.</p> <p>20 MS. LEVINE: Mr. Pope, we're</p> <p>21 going to have questions from some of</p> <p>22 the defense counsel now.</p> <p>23 THE WITNESS: Okay.</p> <p>24 MS. LEVINE: The plaintiffs are</p> <p>25 finished.</p>	<p style="text-align: right;">404</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 sent..., " that refers to Dolph Baker?</p> <p>3 A. Yes, it would.</p> <p>4 Q. And Dolph Baker is an employee</p> <p>5 of Cal-Maine Foods. Is that right?</p> <p>6 A. Yes.</p> <p>7 Q. So Terrie Baker --</p> <p>8 A. Right. I can see --</p> <p>9 Q. -- was not in attendance at</p> <p>10 this meeting?</p> <p>11 A. No, that's right. When you</p> <p>12 asked me that, right away I said -- because I</p> <p>13 thought of Terrie, too.</p> <p>14 Q. But Terrie Baker of Michael</p> <p>15 Foods was not in attendance?</p> <p>16 A. Yeah, Terrie wasn't there.</p> <p>17 This is Dolph.</p> <p>18 MS. ANDERSON: I have no further</p> <p>19 questions.</p> <p>20 THE WITNESS: Yeah. Okay.</p> <p>21 MS. LEVINE: You know what,</p> <p>22 Troy, why don't I ask the questions</p> <p>23 first and then I'll move and you can</p> <p>24 ask the questions.</p> <p>25 - - -</p>
<p style="text-align: right;">403</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 EXAMINATION</p> <p>4 - - -</p> <p>5 BY MS. ANDERSON:</p> <p>6 Q. Mr. Pope, I just have one</p> <p>7 question. My name is Carrie Anderson. I'm</p> <p>8 with Weil, Gotshal. I represent Michael</p> <p>9 Foods.</p> <p>10 A. Okay.</p> <p>11 Q. Follow-up question for you on</p> <p>12 Pope Exhibit 14. If you could pull that</p> <p>13 document out.</p> <p>14 A. Got it.</p> <p>15 Q. At the top of Pope Exhibit 14,</p> <p>16 it states, "Marketing Committee Chairman,</p> <p>17 Dolph Baker called the meeting to order at</p> <p>18 2:00 PM..." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And below the list of names</p> <p>21 there are several paragraphs that begin with</p> <p>22 "Baker..."</p> <p>23 A. Yes.</p> <p>24 Q. Those Baker references such as</p> <p>25 "Baker noted that the UEP office had</p>	<p style="text-align: right;">405</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 EXAMINATION</p> <p>3 - - -</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. Good evening, Mr. Pope.</p> <p>6 A. Good evening.</p> <p>7 Q. You have been very patient</p> <p>8 today.</p> <p>9 A. Fire away.</p> <p>10 Q. I'm going to ask you some</p> <p>11 questions.</p> <p>12 A. Okay.</p> <p>13 Q. If you get tired and you need</p> <p>14 to break, you just tell me. Okay?</p> <p>15 A. All right.</p> <p>16 Q. And like with everybody else,</p> <p>17 you have to wait until I finish the question.</p> <p>18 A. Okay.</p> <p>19 Q. And then you can answer it</p> <p>20 after you've thought about it. Okay?</p> <p>21 A. Okay.</p> <p>22 Q. Earlier today when Mr. Olson</p> <p>23 asked you some questions, you testified that</p> <p>24 the UEP board meetings were sometimes opened.</p> <p>25 Were all UEP board meetings open, every</p>

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<p style="text-align: right;">406</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 single one of them?</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: I believe that all</p> <p>5 the time I was at UEP they were all</p> <p>6 open.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. Was there ever a board meeting</p> <p>9 that you went into executive session for</p> <p>10 sensitive issues?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Were there ever board meetings</p> <p>15 that were done by the telephone, a special</p> <p>16 meeting?</p> <p>17 A. Yes.</p> <p>18 Q. Were Executive Committee</p> <p>19 meetings opened?</p> <p>20 A. No.</p> <p>21 Q. What is the best way to</p> <p>22 determine who was at any particular UEP</p> <p>23 meeting?</p> <p>24 A. Minutes from that meeting.</p> <p>25 Q. I'm going to ask you a couple</p>	<p style="text-align: right;">408</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 was going to be running this wellness center.</p> <p>3 So I called up one of our board</p> <p>4 members in that local area that has close</p> <p>5 ties to Purdue, because that's where it was</p> <p>6 based, and my producer from that -- from</p> <p>7 that -- from our customer said, Ali says, I</p> <p>8 met Jeff, and he says, I think that he is</p> <p>9 really one sharp person. And I think you</p> <p>10 should just call him and talk to him on the</p> <p>11 phone and ask him the questions you have to</p> <p>12 ask. So I did.</p> <p>13 I just got on the phone, I call</p> <p>14 up Jeff, and introduced myself, told him who</p> <p>15 I was. We ended up talking about a half</p> <p>16 hour, 45 minutes because he was, of course,</p> <p>17 enthusiastic about his new endeavor with USDA</p> <p>18 in this wellness center, and he had a lot of</p> <p>19 animal agriculture background. So that's how</p> <p>20 I met him. And as a result of that meeting,</p> <p>21 just on the phone, we said what if we just</p> <p>22 have a brainstorming session, you bring in,</p> <p>23 you know, bird psychologists, whatever, you</p> <p>24 know, because we got those now, and you bring</p> <p>25 in somebody that's particularly good in this</p>
<p style="text-align: right;">407</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of questions about the Scientific Committee.</p> <p>3 A. Okay.</p> <p>4 Q. Do you know a Dr. Jeff</p> <p>5 Armstrong?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me how you first met him.</p> <p>8 A. Yes. Of course, I told you</p> <p>9 earlier of my involvement with animal welfare</p> <p>10 with our friends across the pond. And so it</p> <p>11 was very a high level concern to me because I</p> <p>12 really didn't know how to answer, I didn't</p> <p>13 know what we could do as an industry. So a</p> <p>14 memo or something came across my desk, it was</p> <p>15 probably in somebody's newspaper or</p> <p>16 something, and I saw that USDA was funding an</p> <p>17 animal wellness center. Now, the minute I</p> <p>18 hear some animal wellness, my antenna starts</p> <p>19 going up and I'm thinking now I got to not</p> <p>20 only fight the animal welfare groups, I have</p> <p>21 to fight the USDA, they're setting up a</p> <p>22 wellness center now. So I was a little upset</p> <p>23 about it. I saw that they were doing this</p> <p>24 funding and I saw that Jeff Armstrong, who</p> <p>25 was from NC State, didn't know him from Adam,</p>	<p style="text-align: right;">409</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 area, that area or whatever. And there was a</p> <p>3 one person there whose name was Scotti</p> <p>4 Hester, she was from Purdue, did a lot of</p> <p>5 work with the poultry industry in Indiana.</p> <p>6 And then there was another one called Jan</p> <p>7 Swanson. Jan Swanson was probably, besides</p> <p>8 Jeff, the most credible recognizable</p> <p>9 authority on animal welfare. Jan was with</p> <p>10 Kansas State at the time. One came in from</p> <p>11 the Northwest. I had a couple of producers</p> <p>12 come in. We had a blank piece of paper on</p> <p>13 the wall. And we said, okay, what do we do</p> <p>14 if we start. Well, first of all, one of the</p> <p>15 things they asked me was if I would send them</p> <p>16 my guidelines from '83. Well, I felt pretty</p> <p>17 small after they got in the meeting and just</p> <p>18 tore those apart. They just said they're</p> <p>19 just -- you know, you just can't use these</p> <p>20 kind of weasel words, Al. You can't say</p> <p>21 should or may. It's got to say this is what</p> <p>22 the guideline is, period, and put a number to</p> <p>23 it, put a space to it, do whatever. Okay.</p> <p>24 So we said, okay, what do we have to do to</p> <p>25 get started on this. I didn't have any</p>

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<p style="text-align: right;">410</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 direction other than I could look at it from</p> <p>3 my board or the American Egg Board. Both</p> <p>4 would be really impacted with something like</p> <p>5 this. So we said at the meeting, the first</p> <p>6 thing we were going to do, or that we</p> <p>7 suggested was that we'd establish a</p> <p>8 Scientific Advisory Committee that Jeff felt</p> <p>9 was beyond reproach, that was his idea.</p> <p>10 Okay.</p> <p>11 Q. And who selected --</p> <p>12 MR. OLSON: Hold on. Hold on.</p> <p>13 I move to strike the answer as</p> <p>14 improper narrative.</p> <p>15 THE WITNESS: What does that</p> <p>16 mean? I don't know what it means.</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. You can answer the question.</p> <p>19 You're here to testify to your facts, what</p> <p>20 you understand from your own understanding.</p> <p>21 Who selected the individual</p> <p>22 members of the Scientific Advisory Committee?</p> <p>23 A. Jeff.</p> <p>24 Q. I'll have you take a look at</p> <p>25 Exhibit 3, if you can. Do you have that</p>	<p style="text-align: right;">412</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: I'm going to mark</p> <p>3 the next exhibit. What are we up to?</p> <p>4 THE WITNESS: 47.</p> <p>5 MS. LEVINE: 47, 48.</p> <p>6 Thank you. I'll mark the next</p> <p>7 exhibit as Pope-48.</p> <p>8 - - -</p> <p>9 (Exhibit Pope-48, Joint</p> <p>10 Resolutions Adopted at the Special</p> <p>11 Meeting of the Board of Directors and</p> <p>12 the Members September 8, 2000, 10:00</p> <p>13 a.m., Bates UE0200092 - UE0200099, was</p> <p>14 marked for identification.)</p> <p>15 - - -</p> <p>16 BY MS. LEVINE:</p> <p>17 Q. Why don't you take a look at</p> <p>18 that, Mr. Pope.</p> <p>19 A. Yes.</p> <p>20 Q. And then after we've taken a</p> <p>21 look at it, I'm going to ask you some</p> <p>22 questions.</p> <p>23 A. Okay.</p> <p>24 Q. Take the time you need to look</p> <p>25 at the whole document so you can orient</p>
<p style="text-align: right;">411</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 document, Mr. Pope? Do you have it in front</p> <p>3 of you?</p> <p>4 A. Yes.</p> <p>5 Q. What is the cooperative</p> <p>6 extension?</p> <p>7 A. I don't know. It's obviously</p> <p>8 an arrangement that the feds have made with</p> <p>9 plan grant colleges or something like that.</p> <p>10 I don't know. I mean, they use them so that</p> <p>11 they're basically an extension of USDA, UC</p> <p>12 Davis. And that's really who Don worked for.</p> <p>13 Q. I think you testified that Mr.</p> <p>14 Bell authored this document.</p> <p>15 A. Yes.</p> <p>16 Q. Is it your understanding that</p> <p>17 he authored it on behalf of UC Davis and the</p> <p>18 USDA?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: Yeah, all the</p> <p>21 things he's done here he's done as an</p> <p>22 extension agent for USDA.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. I'm going to ask you another</p> <p>25 question.</p>	<p style="text-align: right;">413</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 yourself. Can you also take out Pope-11</p> <p>3 which was marked earlier today by Mr. Olson?</p> <p>4 A. Yeah. Uh-huh. Okay.</p> <p>5 Q. Now, do you remember when Mr.</p> <p>6 Olson asked you about a proposal?</p> <p>7 A. Yes.</p> <p>8 Q. And you identified Pope-11 as</p> <p>9 the proposal. Correct?</p> <p>10 A. Yes. Uh-huh.</p> <p>11 Q. And that was a proposal for a</p> <p>12 management agreement between UEP and United</p> <p>13 States Egg Marketers. Is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Is that what you testified to</p> <p>16 this morning?</p> <p>17 A. Yes. Uh-huh.</p> <p>18 Q. Can you tell me what -- can you</p> <p>19 look at Pope-48?</p> <p>20 A. Yeah.</p> <p>21 Q. Can you look at Exhibit A to</p> <p>22 Pope-48?</p> <p>23 A. Okay.</p> <p>24 Q. Can you tell me what that</p> <p>25 document is?</p>

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<p style="text-align: right;">414</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Well, that's our final</p> <p>3 agreement with USEM.</p> <p>4 Q. And when you say "our," you</p> <p>5 mean the UEP-USEM management agreement?</p> <p>6 A. Yes. Uh-huh.</p> <p>7 Q. And did you sign this agreement</p> <p>8 on behalf of United Egg Producers?</p> <p>9 A. Yes.</p> <p>10 Q. And who signed it on behalf of</p> <p>11 United States Egg Marketers, Inc.?</p> <p>12 A. Jerry Faulkner, I believe.</p> <p>13 Let's see. Yeah.</p> <p>14 Q. Before this management</p> <p>15 agreement was signed, were there competing</p> <p>16 proposals back and forth?</p> <p>17 A. There were some -- there were</p> <p>18 some that members from both organizations</p> <p>19 worked on. We just -- whatever they ended up</p> <p>20 with. Originally, you know, I guess -- I</p> <p>21 think I was asked the question this morning</p> <p>22 whether this was the agreement on this one</p> <p>23 here. Well --</p> <p>24 Q. This meaning Pope-11?</p> <p>25 A. Yeah. At the time, at the time</p>	<p style="text-align: right;">416</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Is that correct?</p> <p>3 A. Yeah, the USEM board members.</p> <p>4 MR. OLSON: Hold on. Hold on.</p> <p>5 Objection.</p> <p>6 MS. LEVINE: I'll ask the</p> <p>7 question again.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Mr. Pope, does USEM have a</p> <p>10 separate bank account?</p> <p>11 A. Yes.</p> <p>12 Q. And do you know where the</p> <p>13 profits, if there were any, from USEM went?</p> <p>14 A. No.</p> <p>15 Q. Would that be a decision of the</p> <p>16 board of USEM?</p> <p>17 A. Yes.</p> <p>18 Q. USEM was a separate company</p> <p>19 from UEP. Is that correct?</p> <p>20 A. Yes.</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. Can you tell me the corporate</p> <p>24 structure of USEM?</p> <p>25 A. No, other than it's a</p>
<p style="text-align: right;">415</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 this is what we needed to have included in</p> <p>3 our agreement. It seems to me that this is</p> <p>4 the final agreement here because it included</p> <p>5 input from their members and our members.</p> <p>6 Q. And when you say "agreement,"</p> <p>7 were the terms that were finally agreed to</p> <p>8 set forth in Exhibit A to Pope-48?</p> <p>9 A. Yes.</p> <p>10 Q. Whereas Pope-11 just attaches</p> <p>11 one of the earlier proposals. Is that</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, looking at the management</p> <p>15 agreement Exhibit A --</p> <p>16 A. Yes.</p> <p>17 Q. -- am I correct that USEM had a</p> <p>18 separate bank account from UEP?</p> <p>19 A. Yes.</p> <p>20 Q. And where did the profits of</p> <p>21 USEM go?</p> <p>22 A. Well, they go to the board</p> <p>23 members and they determine what they're going</p> <p>24 to do with any profits, if there are any.</p> <p>25 Q. Right. The USEM board members.</p>	<p style="text-align: right;">417</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Capper-Volstead cooperative. I don't think</p> <p>3 I've ever seen their agreement or anything.</p> <p>4 Q. Mr. Pope, did UEP do anything</p> <p>5 to help its members market their eggs?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: I never know what</p> <p>8 that means. Somebody needs to explain</p> <p>9 what that means to me. I mean, you</p> <p>10 know, the thing is that I don't</p> <p>11 understand some of the language, so I</p> <p>12 think that's fair enough on my part.</p> <p>13 But we did -- everything we did could</p> <p>14 be interpreted as marketing for our</p> <p>15 members. That's what we lived and</p> <p>16 died for. What do we do today, what</p> <p>17 do we do this week that is going to</p> <p>18 help producers be financially better</p> <p>19 off or whatever.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. Did UEP have an egg trading</p> <p>22 company?</p> <p>23 A. Yes. Well, we had an egg</p> <p>24 trading service within UEP.</p> <p>25 Q. Did that service -- what was</p>

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<p style="text-align: right;">418</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 the purpose of that service?</p> <p>3 A. Well, it basically balanced</p> <p>4 longs and shorts. You got a flock going out</p> <p>5 there, you're not always going to have the</p> <p>6 right size at the right time. You got you're</p> <p>7 long on smalls and you're short on larges.</p> <p>8 So our trader would go out like a broker and</p> <p>9 would look for other members that could fill</p> <p>10 that need and then they'd match them up.</p> <p>11 Q. What about the Five Star</p> <p>12 Program, what did that do?</p> <p>13 MR. OLSON: Objection. Form.</p> <p>14 THE WITNESS: The Five Star</p> <p>15 Program, well, I think there was two</p> <p>16 of them. I think we started off with</p> <p>17 it was the original, it was one of the</p> <p>18 original animal welfare, original</p> <p>19 animal welfare guidelines might have</p> <p>20 been a Five Star Program. And then</p> <p>21 the Five Star Program morphed into a</p> <p>22 Food Safety Program that we put</p> <p>23 together for producers. But Five Star</p> <p>24 was not a certification, it wasn't</p> <p>25 anything. It was just puffery.</p>	<p style="text-align: right;">420</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. Okay.</p> <p>3 Q. I want you to focus on the</p> <p>4 fourth number because Mr. Olson asked you a</p> <p>5 couple of questions about that this morning.</p> <p>6 Okay?</p> <p>7 A. Okay.</p> <p>8 Q. Mr. Olson this morning asked</p> <p>9 you about Don's -- Don Bell's suggestions</p> <p>10 here in number 4. And at first you told Mr.</p> <p>11 Olson that you did not recall any discussion</p> <p>12 of those suggestions.</p> <p>13 A. Yeah.</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. Then later after Mr. Olson</p> <p>17 asked you repeatedly to confirm that the</p> <p>18 fourth suggestion was discussed, you changed</p> <p>19 your answer.</p> <p>20 MR. OLSON: Objection to form.</p> <p>21 BY MS. LEVINE:</p> <p>22 Q. Sitting here today, and I want</p> <p>23 you to think about the question, do you</p> <p>24 recall any discussion about number 4?</p> <p>25 A. No.</p>
<p style="text-align: right;">419</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 whatever, had no -- had nothing behind</p> <p>3 it really. Because though unlike the</p> <p>4 certification program, they weren't</p> <p>5 audited, they weren't anything. This</p> <p>6 is just a recommendation. This is</p> <p>7 what you should be doing on food</p> <p>8 safety.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. To make the eggs safer?</p> <p>11 A. Yeah.</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Why don't you take a look at</p> <p>15 Pope-8 that was marked this morning?</p> <p>16 A. 8.</p> <p>17 Q. Yep. Do you remember this</p> <p>18 document, Mr. Pope?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Can you turn to page 3, column</p> <p>21 2.</p> <p>22 A. Okay.</p> <p>23 Q. Do you see page 3, column 2?</p> <p>24 And there are four numbers, 1, 2, 3, 4. Do</p> <p>25 you see that?</p>	<p style="text-align: right;">421</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 BY MS. LEVINE:</p> <p>4 Q. Mr. Pope, could you take out</p> <p>5 Exhibit Number 26, please.</p> <p>6 A. Okay.</p> <p>7 MR. OLSON: I'm sorry, could you</p> <p>8 let me know what document that is?</p> <p>9 MS. LEVINE: Pope-26, it is the</p> <p>10 U.S. Economic/Animal Welfare Outlook</p> <p>11 dated April 2003.</p> <p>12 THE WITNESS: I think I had the</p> <p>13 wrong one there.</p> <p>14 MS. SUMNER: It's the thing he</p> <p>15 wrote for the International Egg</p> <p>16 Commission.</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. The one you wrote for the</p> <p>19 International Egg Commission.</p> <p>20 A. 26.</p> <p>21 Q. Get that out, put the other</p> <p>22 ones back so you don't get confused.</p> <p>23 A. Okay.</p> <p>24 Q. I want you to look at page 1 at</p> <p>25 the very bottom.</p>

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<p style="text-align: right;">422</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. Where it starts, "We've urged</p> <p>4 Producers..."</p> <p>5 A. Yes.</p> <p>6 Q. Why don't you take a look at</p> <p>7 that.</p> <p>8 A. Okay.</p> <p>9 Q. What did UEP tell producers</p> <p>10 about building new houses as they were</p> <p>11 phasing into the guidelines?</p> <p>12 A. Well, of course we didn't -- we</p> <p>13 didn't tell them anything. We suggested that</p> <p>14 they need to weigh their needs because if</p> <p>15 they were -- historically when they add a new</p> <p>16 house, let's say that meeting the new</p> <p>17 guidelines would result in them being --</p> <p>18 let's just pick a figure, short 10,000 layers</p> <p>19 necessary to fill the customer's needs. Are</p> <p>20 they going to build a house with 10,000, no.</p> <p>21 They're going to build a house with 100,000.</p> <p>22 So it was -- we thought it was worthwhile to</p> <p>23 caution them that when they were -- there was</p> <p>24 obviously no prohibition against doing it and</p> <p>25 doing it consistent with guidelines, but they</p>	<p style="text-align: right;">424</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 substantially."</p> <p>3 Q. What did you mean by that?</p> <p>4 A. Well, it was one of the things</p> <p>5 that we didn't have any idea, shocked</p> <p>6 everybody, is that while everybody thought</p> <p>7 they were being penalized by giving more</p> <p>8 space to the birds, when they actually did</p> <p>9 it, they found out that they were getting</p> <p>10 more production out of those fewer number of</p> <p>11 birds and the birds -- you know, it was just</p> <p>12 something that we just didn't expect and it</p> <p>13 just kind of took us all by surprise.</p> <p>14 Q. Would it be fair to say that</p> <p>15 one of the results of the Animal Welfare</p> <p>16 Program was to make the birds more</p> <p>17 productive?</p> <p>18 MR. OLSON: Objection to form.</p> <p>19 THE WITNESS: Sure.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. That was an increase in the</p> <p>22 number of birds. Is that correct?</p> <p>23 MR. OLSON: Objection to form.</p> <p>24 THE WITNESS: That was increase</p> <p>25 in the number of birds.</p>
<p style="text-align: right;">423</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 needed to know that when they did that, you</p> <p>3 know, it could have a negative impact on the</p> <p>4 domestic market.</p> <p>5 Q. Because more eggs than before</p> <p>6 the guidelines would be put in?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. Mr. Pope, I want you to look at</p> <p>11 what you wrote on Pope-26.</p> <p>12 A. Okay.</p> <p>13 Q. Why don't you read it into the</p> <p>14 record?</p> <p>15 MR. OLSON: The whole document?</p> <p>16 MS. LEVINE: No, just the last</p> <p>17 two lines, what he's focusing on.</p> <p>18 THE WITNESS: "We've urged</p> <p>19 Producers..."?</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. Yes.</p> <p>22 A. "We've urged Producers to</p> <p>23 temper their desire to construct new</p> <p>24 buildings because as the Layers are given</p> <p>25 greater density their productivity improves</p>	<p style="text-align: right;">425</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. Sorry, the increase in the</p> <p>4 number of eggs?</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 THE WITNESS: Oh, yes. Uh-huh.</p> <p>7 Yeah.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Was there ever any agreement</p> <p>10 not to build new houses?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MS. LEVINE:</p> <p>14 Q. Did the guidelines place any</p> <p>15 restriction at all on the building of new</p> <p>16 houses?</p> <p>17 A. No.</p> <p>18 Q. Did UEP ever place any</p> <p>19 restriction at all on the building of new</p> <p>20 houses?</p> <p>21 A. No.</p> <p>22 Q. Could producers do whatever</p> <p>23 they wanted in terms of building new houses?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: And did.</p>

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<p style="text-align: right;">426</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. Did the guidelines require</p> <p>4 producers to reduce their flock size?</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. Did UEP ever require producers</p> <p>9 to reduce their flock size?</p> <p>10 A. No.</p> <p>11 Q. Did the guidelines place any</p> <p>12 restriction on producer's flock size?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: (Nods no.)</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. Did UEP ever place any</p> <p>17 restriction on any producer's flock size?</p> <p>18 A. No.</p> <p>19 Q. Did the guidelines require</p> <p>20 producers to reduce chick hatch?</p> <p>21 A. No.</p> <p>22 Q. Did UEP ever require producers</p> <p>23 to reduce chick hatch?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">428</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And what does animal care, that</p> <p>3 term refer to?</p> <p>4 A. Well, we always spoke of it as</p> <p>5 in relationship to our Animal Welfare</p> <p>6 Program.</p> <p>7 Q. So that paragraph, the third</p> <p>8 bullet is talking about the Animal Certified</p> <p>9 Program, the UEP Animal Certified Program.</p> <p>10 Correct?</p> <p>11 A. Yeah.</p> <p>12 MR. OLSON: Note my objection to</p> <p>13 form.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. In the first bullet, "Industry</p> <p>16 Economics" --</p> <p>17 A. Yes.</p> <p>18 Q. -- where you see it says,</p> <p>19 "...programs..."</p> <p>20 A. Yes.</p> <p>21 Q. With a little P. Do you see</p> <p>22 that?</p> <p>23 A. Yes. Uh-huh.</p> <p>24 Q. Were you referring to the</p> <p>25 Animal Care Certified Program there?</p>
<p style="text-align: right;">427</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. Did the guidelines place any</p> <p>4 restriction on any producer's chick hatch?</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MS. LEVINE:</p> <p>8 Q. Did UEP ever place any</p> <p>9 restriction on any producer's chick hatch?</p> <p>10 A. No.</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 BY MS. LEVINE:</p> <p>13 Q. Would you take a look at</p> <p>14 Pope-32.</p> <p>15 A. Okay. Oh, okay.</p> <p>16 Q. On page 2 -- on page 2 of the</p> <p>17 document --</p> <p>18 A. Yes.</p> <p>19 Q. -- if you turn it over, yeah.</p> <p>20 Okay. The first bullet point says, "Industry</p> <p>21 Economics." Is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. The third bullet point says,</p> <p>24 "Animal Care." Is that correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">429</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: No. You know, if</p> <p>4 you stretch all these, you can say</p> <p>5 every program we did was for the</p> <p>6 purpose of enhancing the values</p> <p>7 because if you're a good steward and</p> <p>8 you do this and you do that and you're</p> <p>9 making a quality product. So</p> <p>10 hopefully they sell more eggs.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Did the Animal Welfare Program</p> <p>13 affect producer's cost structure?</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 THE WITNESS: I wouldn't know.</p> <p>16 I don't know.</p> <p>17 BY MS. LEVINE:</p> <p>18 Q. Didn't you testify this morning</p> <p>19 that there was a \$0.06 to \$0.09 cost</p> <p>20 increase?</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 THE WITNESS: Yes. I didn't --</p> <p>23 no, that's not what I said. Let me go</p> <p>24 back, because I don't think I said</p> <p>25 that. I think what I said was a guy</p>

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<p style="text-align: right;">430</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 by the name Allan Rahn from the</p> <p>3 University of Michigan or Michigan</p> <p>4 State did a survey on his own because</p> <p>5 he was actually taught at the</p> <p>6 University of Georgia on poultry</p> <p>7 science, and he was an economist as</p> <p>8 well. He did up some kind of a chart</p> <p>9 and basically told the industry that</p> <p>10 the expected increase to accommodate</p> <p>11 these new guidelines is going to cost</p> <p>12 them over some period of time,</p> <p>13 whatever it was, \$0.06 to \$0.09 a</p> <p>14 dozen. That's -- and that was what we</p> <p>15 were faced with in the beginning.</p> <p>16 BY MS. LEVINE:</p> <p>17 Q. You told Mr. Olson earlier this</p> <p>18 morning that the program impacted the</p> <p>19 producer's bottom line. What did you mean by</p> <p>20 that?</p> <p>21 A. Well, like any other item, if</p> <p>22 we are discussing issues of economics, it</p> <p>23 always is going to impact on our producer's</p> <p>24 bottom line, good or bad, I don't know. It</p> <p>25 depends on what takes place. But we remind</p>	<p style="text-align: right;">432</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. Okay. I'm going to ask you</p> <p>4 another question.</p> <p>5 A. Here I thought all the time he</p> <p>6 was saying excellent point.</p> <p>7 Q. Let me ask you to take a look</p> <p>8 at Pope-20. Do you have Pope-20 in front of</p> <p>9 you?</p> <p>10 A. Yes.</p> <p>11 Q. These are the October 9, 2002,</p> <p>12 UEP Animal Welfare Committee minutes?</p> <p>13 A. Yes.</p> <p>14 Q. I'll ask you to look at the</p> <p>15 bottom of page 2. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And the top of page 3.</p> <p>18 A. Okay.</p> <p>19 Q. Take a look at the top of</p> <p>20 page 3 where it starts, "Motion:" Tell me</p> <p>21 when you've finished reading that motion.</p> <p>22 A. Okay.</p> <p>23 Q. Who is this motion brought by</p> <p>24 on the top of page 3, the one that you're</p> <p>25 just reading, the top of page 3?</p>
<p style="text-align: right;">431</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 them all the time that good prudent</p> <p>3 decision-making process on the level of</p> <p>4 production was a good thing to do.</p> <p>5 Q. It might cost them more to do</p> <p>6 that?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: It might cost them</p> <p>9 more to do that. When they first</p> <p>10 looked at the program, I don't think</p> <p>11 there was any doubt in their mind that</p> <p>12 it was going to cost them more to do</p> <p>13 it.</p> <p>14 MS. LEVINE: Thank you, Mr.</p> <p>15 Pope.</p> <p>16 MR. OLSON: Move to strike that</p> <p>17 comment.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. And that is your recollection?</p> <p>20 A. Yes.</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 MS. LEVINE: Obviously, Mr.</p> <p>23 Olson, every time you move to strike,</p> <p>24 we oppose. This is a fact witness and</p> <p>25 is testifying to his memory.</p>	<p style="text-align: right;">433</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Well, this one --</p> <p>3 Q. Back to the top of page 3.</p> <p>4 A. Okay. Yeah. Okay. All right.</p> <p>5 MR. OLSON: Okay. Counsel,</p> <p>6 please don't steer the witness to</p> <p>7 where you want a particular answer.</p> <p>8 MS. LEVINE: I'm trying to steer</p> <p>9 the witness to -- I'm asking about a</p> <p>10 particular motion.</p> <p>11 THE WITNESS: It was moved by</p> <p>12 Ken Looper. Ken Looper was a member</p> <p>13 of the Animal Welfare Committee.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. Was Len Looper a member of UEP?</p> <p>16 A. Yes.</p> <p>17 Q. Who was it seconded by?</p> <p>18 A. Bahan.</p> <p>19 Q. Do you remember Mr. Bahan's</p> <p>20 first name?</p> <p>21 A. No.</p> <p>22 Q. Was Mr. --</p> <p>23 A. Paul.</p> <p>24 Q. Paul. Is Paul Bahan a member</p> <p>25 of UEP?</p>

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<p style="text-align: right;">434</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. He was at that time.</p> <p>3 Q. So is that motion made by</p> <p>4 members of UEP?</p> <p>5 A. Yes.</p> <p>6 Q. I want you to look at the</p> <p>7 bottom of page 2.</p> <p>8 A. Okay.</p> <p>9 Q. I think earlier today you</p> <p>10 testified that the UEA further processor</p> <p>11 motion -- that the UEA, sorry, further</p> <p>12 processors had made a motion. Is that</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Who actually made the motion?</p> <p>16 MR. OLSON: Objection to form.</p> <p>17 THE WITNESS: I'd have to go to</p> <p>18 the further processor meeting and find</p> <p>19 out who made it. I don't know who</p> <p>20 made it. This happened, this must</p> <p>21 have happened some earlier time.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. You don't think that happened,</p> <p>24 you don't think that motion was made at the</p> <p>25 UEP Animal Welfare Committee meeting?</p>	<p style="text-align: right;">436</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Dated October 28, 2004?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Mr. Pope, can you look at the</p> <p>5 top of page 3?</p> <p>6 A. Okay.</p> <p>7 Q. At the very first paragraph</p> <p>8 about the second or the third sentence it</p> <p>9 says, "The Board approved the following plan</p> <p>10 of action:"</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Would that be the UEP board?</p> <p>14 A. Yes.</p> <p>15 Q. I want you to take a look at</p> <p>16 the bottom of that page, page 3 where it</p> <p>17 says, "UEA - Allied Membership Meeting."</p> <p>18 A. Yeah.</p> <p>19 Q. Do you know whether UEA did, in</p> <p>20 fact, set aside \$20,000?</p> <p>21 A. No.</p> <p>22 Q. And do you even know what</p> <p>23 animal welfare research projects refers to?</p> <p>24 A. No.</p> <p>25 Q. You have no idea whether it</p>
<p style="text-align: right;">435</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: No. It was made</p> <p>5 at a UEA meeting, not a UEP meeting.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. At UEP meetings who makes</p> <p>8 motions?</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 THE WITNESS: Only the board.</p> <p>11 BY MS. LEVINE:</p> <p>12 Q. Only the UEP board?</p> <p>13 A. Only the UEP board, yeah.</p> <p>14 Q. And in the vote at the UEP</p> <p>15 board, who are the people that vote on that</p> <p>16 motion?</p> <p>17 A. Only the board members.</p> <p>18 Q. Board members of UEP?</p> <p>19 A. Yes.</p> <p>20 Q. Thank you. I'll ask you to</p> <p>21 take a look at Pope-36. It's a copy --</p> <p>22 A. Okay.</p> <p>23 Q. It's a copy of United Voices</p> <p>24 that you took a look at this morning?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">437</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 refers to the animal certified program or</p> <p>3 not?</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 THE WITNESS: No, I don't know.</p> <p>6 I'm just assuming that it did, but I</p> <p>7 don't know that. Here it even says</p> <p>8 for animal welfare projects.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. But you don't know if it deals</p> <p>11 with certified --</p> <p>12 A. I don't know if they ever spent</p> <p>13 the money.</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. Mr. Pope, I'll ask you to take</p> <p>17 a look at the next document which is Pope-40.</p> <p>18 A. Okay.</p> <p>19 Q. Okay?</p> <p>20 A. Yes.</p> <p>21 Q. This is a document that Mr.</p> <p>22 Olson showed you this morning. Do you</p> <p>23 remember it?</p> <p>24 A. Yes.</p> <p>25 Q. Mr. Olson asked you to read a</p>

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<p style="text-align: right;">438</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 lot of this letter, a lot of this document,</p> <p>3 but he missed three sentences.</p> <p>4 A. Which three, the last -- the</p> <p>5 end ones?</p> <p>6 Q. In the paragraph that starts,</p> <p>7 "From day 1..."</p> <p>8 A. Okay.</p> <p>9 Q. Could you read from starting</p> <p>10 from the word "Our program..."?</p> <p>11 A. Our program maintains 80% of</p> <p>12 industry participation. As you know, one of</p> <p>13 the key provisions is that in order to comply</p> <p>14 with our program producers must commit to</p> <p>15 100% of its production under the guideline.</p> <p>16 It's the only way to assure compliance and</p> <p>17 prevent the commingling of certified eggs</p> <p>18 with uncertified eggs. Plus, it's just the</p> <p>19 right thing to do for the Animal Welfare</p> <p>20 issue for our birds.</p> <p>21 Q. You talked about commingling</p> <p>22 this morning. What did you mean by "Plus,</p> <p>23 it's the right thing to do for...Animal</p> <p>24 Welfare for our birds"?</p> <p>25 A. Well, one of the things that</p>	<p style="text-align: right;">440</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. I think you talked about this</p> <p>3 document this morning.</p> <p>4 A. Yeah. Uh-huh.</p> <p>5 Q. Did you think that Mr. Mueller</p> <p>6 or Mr. Sparboe was really concerned about</p> <p>7 antitrust violations?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: Well, addressing</p> <p>10 that excellent point, I hate to say</p> <p>11 that every week it was something</p> <p>12 different, but I would say if they</p> <p>13 could think of some reason to bring it</p> <p>14 up again, they would. And this</p> <p>15 particular letter was, I think we'll</p> <p>16 bring up Capper-Volstead Act. I think</p> <p>17 that's what we'll do this time.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. What do you mean by that?</p> <p>20 MR. OLSON: Objection to form.</p> <p>21 THE WITNESS: Well, they put</p> <p>22 impediments in all the way we were</p> <p>23 working on this. All the time the</p> <p>24 committee was working, despite the</p> <p>25 fact that the board and the committee</p>
<p style="text-align: right;">439</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 we've been always concerned about, you know,</p> <p>3 you heard some discussion today about the</p> <p>4 further egg processors, you know, doing 20,</p> <p>5 30 percent of -- using 20, 30 percent of the</p> <p>6 eggs. And an argument always came up that</p> <p>7 the processors, they don't really care</p> <p>8 whether they're animal care or not. I'm not</p> <p>9 going to say all of them, but some of them</p> <p>10 don't. And our board is committed to the</p> <p>11 welfare of the animal. We don't care if the</p> <p>12 eggs are broken or what they are. We tell --</p> <p>13 every time we get an opportunity to talk to</p> <p>14 anybody that's buying eggs, we're going to</p> <p>15 say what's the excuse for raising them, not</p> <p>16 meeting the guidelines. We got to do the</p> <p>17 right thing. What is the right thing. The</p> <p>18 Science Advisory Committee didn't say just do</p> <p>19 this for the ones you're selling to the chain</p> <p>20 stores. They said do this for all eggs, so</p> <p>21 we would constantly sell it on that basis.</p> <p>22 Q. Thank you, Mr. Pope. I ask you</p> <p>23 to take a look at Exhibit 28.</p> <p>24 A. Okay. Let's see here. 28.</p> <p>25 29, 28. Okay.</p>	<p style="text-align: right;">441</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 were always courteous, allowed them to</p> <p>3 make their presentation, never shorted</p> <p>4 them on time, never avoided talking to</p> <p>5 them or anything. And so every time</p> <p>6 when they came back, they basically</p> <p>7 felt like they had to come back with</p> <p>8 another excuse, another reason why</p> <p>9 they wanted this. What can I say, I</p> <p>10 don't know what motivated them. I</p> <p>11 mean, but when I look at it and I say,</p> <p>12 well, to me, it's just another issue</p> <p>13 that they want to have the opportunity</p> <p>14 to bring this issue up again. And the</p> <p>15 answer to all of those are, what are</p> <p>16 the committee and board, what are</p> <p>17 their recommendation. That's it.</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. And when you just were talking</p> <p>20 and you said "this," did you mean the animal</p> <p>21 certified program?</p> <p>22 A. Yes.</p> <p>23 Q. You said you went up and talked</p> <p>24 to Sparboe a couple of times?</p> <p>25 A. Yes, at least three.</p>

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<p style="text-align: right;">442</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And Mr. Mueller was there?</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: Yes. And Beth.</p> <p>5 BY MS. LEVINE:</p> <p>6 Q. What is your understanding of</p> <p>7 Sparboe's motive for complaining about the</p> <p>8 animal certified --</p> <p>9 A. You have to ask Sparboe, I</p> <p>10 don't know. You know, and the beautiful</p> <p>11 thing was that as far as I know, Sparboe has</p> <p>12 got a great farm and they were meeting the</p> <p>13 guidelines because I think one of their</p> <p>14 customers demanded it. So I think they're a</p> <p>15 good farm, they were managed well. So what</p> <p>16 his motivation was, I don't know.</p> <p>17 Q. Do you think he had his own</p> <p>18 business motivation --</p> <p>19 MR. OLSON: Olson.</p> <p>20 BY MS. LEVINE:</p> <p>21 Q. -- for complaining to UEP?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: I don't know why</p> <p>24 he would keep bringing it back if he</p> <p>25 didn't have some idea of what he</p>	<p style="text-align: right;">444</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 membership.</p> <p>3 A. Okay.</p> <p>4 Q. Now, I think you said this</p> <p>5 morning that to be a member of UEP, you had</p> <p>6 to be a farmer. Is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Now, you had different -- UEP</p> <p>9 had different categories of members. Is that</p> <p>10 correct?</p> <p>11 A. Yes, we did.</p> <p>12 Q. I'm going to ask you about each</p> <p>13 one.</p> <p>14 A. Okay.</p> <p>15 Q. You could be an egg producer.</p> <p>16 Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And UEP defined that as hen</p> <p>19 house capacity of all layers in owned, leased</p> <p>20 or contract facilities. Is that correct?</p> <p>21 A. Yes.</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. So tell me what that category,</p> <p>25 an egg producer meant to you? Take it step</p>
<p style="text-align: right;">443</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 wanted to do. So I don't -- I just</p> <p>3 don't know. I -- at this particular</p> <p>4 meeting -- let me see here. The one</p> <p>5 where we referred to where Mueller was</p> <p>6 there, so everybody leaves and their</p> <p>7 attorney is still there. So I said to</p> <p>8 Mueller, just in passing, I said, you</p> <p>9 know, I just really don't understand</p> <p>10 this because what we've determined</p> <p>11 now, see, we were in the program now</p> <p>12 for a year or two, I don't remember,</p> <p>13 is that we're finding that the cost is</p> <p>14 offset by the increased production of</p> <p>15 the bird. So why would Bob be opposed</p> <p>16 to this. Well, his answer was, I</p> <p>17 can't figure it out either. That was</p> <p>18 the answer. So I don't know, Mueller</p> <p>19 didn't know, you'd have to ask Bob or</p> <p>20 Beth.</p> <p>21 MR. OLSON: Objection to the</p> <p>22 narrative.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. Mr. Pope, I'm just going to ask</p> <p>25 you a couple of questions about UEP</p>	<p style="text-align: right;">445</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 by step.</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: Okay. The -- in</p> <p>5 my mind, the egg producer is the one</p> <p>6 that by and large owns everything and</p> <p>7 is taking the risk.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Now, that egg producer as you</p> <p>10 just described, if he didn't have enough</p> <p>11 houses on his own farm, could he put some of</p> <p>12 his layers on another farm?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. And all of those layers would</p> <p>17 still count as his layers for purposes of</p> <p>18 being a farmer. Is that correct?</p> <p>19 A. Yes, if he owned them.</p> <p>20 Q. And breeder flocks, you could</p> <p>21 have a category called breeder flock?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MS. LEVINE:</p> <p>25 Q. Can you tell me what a breeder</p>

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<p style="text-align: right;">446</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 flock is?</p> <p>3 A. Yeah. Basically it's taking</p> <p>4 the strain of birds that they use on that</p> <p>5 farm and they're raising baby chicks for</p> <p>6 their use. Now, the majority of the industry</p> <p>7 bought them from a hatchery, one of the large</p> <p>8 hatcheries that represented their high line</p> <p>9 birds or whoever it might be. Some of our</p> <p>10 producers had their own -- not many, but some</p> <p>11 of our producers had their own breeder under</p> <p>12 the auspices of that particular breed of</p> <p>13 bird. They'd get help from them. But they</p> <p>14 wanted to do the whole thing. They wanted it</p> <p>15 from a security standpoint so that the birds</p> <p>16 were in their environment and they moved from</p> <p>17 that environment to the grow-out facility</p> <p>18 which was another process that they owned.</p> <p>19 And then from the grow-out facility, once</p> <p>20 they started laying eggs, they moved into an</p> <p>21 egg layer house. That's really --</p> <p>22 Q. And all of those entities</p> <p>23 you've just described was a farmer to you?</p> <p>24 A. Yes.</p> <p>25 MR. OLSON: Objection to form.</p>	<p style="text-align: right;">448</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 BY MS. LEVINE:</p> <p>4 Q. Starter pullets is the third</p> <p>5 category. Describe to us what a starter</p> <p>6 pullet is.</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: Well, a starter</p> <p>9 pullet is -- comes from a baby chick,</p> <p>10 and a few weeks later as they grow,</p> <p>11 they get to be a starter pullet and</p> <p>12 all they're doing is laying -- if</p> <p>13 they're laying any eggs, they're few</p> <p>14 and far between and they're what we</p> <p>15 call pullet eggs, they're just small</p> <p>16 eggs that haven't developed fully yet.</p> <p>17 So after a period of time, they take</p> <p>18 the starter pullets and then they put</p> <p>19 them into a regular house when they</p> <p>20 start producing on a regular basis.</p> <p>21 BY MS. LEVINE:</p> <p>22 Q. And people in the starter</p> <p>23 pullet business could be members of UEP?</p> <p>24 MR. OLSON: Objection to form.</p> <p>25 THE WITNESS: Yes. And in most</p>
<p style="text-align: right;">447</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. LEVINE:</p> <p>3 Q. They could be part of one</p> <p>4 company or they could be separate. Is that</p> <p>5 right?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. So a breeder flock --</p> <p>10 A. Yes.</p> <p>11 Q. -- was a company that was just</p> <p>12 a breeder flock. Is that right?</p> <p>13 A. Yes.</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. And they could be a member of</p> <p>17 UEP. Right?</p> <p>18 A. Yes.</p> <p>19 Q. And they were a farmer. Right?</p> <p>20 A. Yes.</p> <p>21 MR. OLSON: Objection to form.</p> <p>22 BY MS. LEVINE:</p> <p>23 Q. And an egg producer was a</p> <p>24 farmer?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">449</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 cases they were already members</p> <p>3 because they owned it all anyhow.</p> <p>4 BY MS. LEVINE:</p> <p>5 Q. And you considered the starter</p> <p>6 pullet members to be farmers?</p> <p>7 MR. OLSON: Objection to form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. LEVINE:</p> <p>10 Q. You had a category for contract</p> <p>11 producer. Correct?</p> <p>12 A. Yes.</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. What is a contract producer?</p> <p>16 A. Well, a contract producer is</p> <p>17 somebody that makes a contract with one of</p> <p>18 our producers to produce so many birds for</p> <p>19 him. Ownerships are varied. The producer</p> <p>20 may own all the birds. He may help them with</p> <p>21 how to take care of the birds and all that</p> <p>22 kind of stuff. And he takes the financial</p> <p>23 liability, but, of course, that contract</p> <p>24 producer is a farmer. So we made an</p> <p>25 accomodation for them to participate if they</p>

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<p style="text-align: right;">450</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 wanted to. We didn't want them locked out or</p> <p>3 anything. Just wasn't very many of them.</p> <p>4 Was not a prevalent thing in our industry.</p> <p>5 Q. And a cooperative itself could</p> <p>6 be a member of UEP?</p> <p>7 A. Sure.</p> <p>8 Q. And you considered a cooperative</p> <p>9 to be a farmer?</p> <p>10 A. Yes.</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: We had seven of</p> <p>13 them -- several of them. I said</p> <p>14 seven. We had several of those.</p> <p>15 BY MS. LEVINE:</p> <p>16 Q. I think you said this morning</p> <p>17 that you, yourself, did not really make the</p> <p>18 determinations about farmer membership. Is</p> <p>19 that right?</p> <p>20 A. No.</p> <p>21 Q. And who is that?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. Who did that?</p> <p>25 A. That would be -- the one that</p>	<p style="text-align: right;">452</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Well, we have another one that</p> <p>3 you can ask again Linda Reichert about. We</p> <p>4 have another one at the end of the year,</p> <p>5 usually in October, November, and we put</p> <p>6 together a note, send it out to all our</p> <p>7 members because that's when our dues are</p> <p>8 determined what they are. And they vary from</p> <p>9 year to year because of the number of birds</p> <p>10 they have. And so then Linda sends those</p> <p>11 out, we get those backs and so we can -- we</p> <p>12 know how many flocks, where they're at and</p> <p>13 all this kind of stuff.</p> <p>14 Q. You also have membership forms?</p> <p>15 MR. OLSON: Objection to form.</p> <p>16 THE WITNESS: No, they're not a</p> <p>17 membership form, but they are -- they</p> <p>18 validate our membership, let me put it</p> <p>19 that way. It's not a standard form,</p> <p>20 but it's a standard form as it relates</p> <p>21 to determining what the dues. But it</p> <p>22 does validate them.</p> <p>23 BY MS. LEVINE:</p> <p>24 Q. Those are the flock records</p> <p>25 that you're talking about?</p>
<p style="text-align: right;">451</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 worked on it was Gene and Chad, but in order</p> <p>3 to determine whether they were a farmer or</p> <p>4 not, Gene and Chad would communicate with</p> <p>5 Irving, if there was any question, I mean.</p> <p>6 Q. And when you talked about</p> <p>7 annual updates --</p> <p>8 A. Yeah.</p> <p>9 Q. -- in terms of the flocks --</p> <p>10 A. Yes.</p> <p>11 Q. -- what were you speaking</p> <p>12 about?</p> <p>13 A. Well, there's two ways, and we</p> <p>14 just integrated it into finding out whether</p> <p>15 they were a farmer or not. I mean, the two</p> <p>16 ways that we do that is, number one, we have</p> <p>17 the certified companies. So on the certified</p> <p>18 companies, after they're audited, after USDA</p> <p>19 has done auditing, they send us copies of</p> <p>20 their report so we have a file on each one of</p> <p>21 our members, and we know how many flocks they</p> <p>22 got and where they're at and things like</p> <p>23 that. Okay. That's one way. So we've got</p> <p>24 that document which basically covers the</p> <p>25 certified ones.</p>	<p style="text-align: right;">453</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah. Uh-huh.</p> <p>3 Q. Did you also have -- did you</p> <p>4 also have your members fill out a form when</p> <p>5 they first became members?</p> <p>6 A. Yes.</p> <p>7 MS. LEVINE: I have no further</p> <p>8 questions. Thank you very much, Mr.</p> <p>9 Pope.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MS. LEVINE: I think we have a</p> <p>12 couple more questions or no?</p> <p>13 MR. HUTCHINSON: It could be as</p> <p>14 much as 30 minutes.</p> <p>15 MS. LEVINE: Mr. Pope, do you</p> <p>16 want to take a little rest?</p> <p>17 THE WITNESS: I don't want to</p> <p>18 take any more breaks.</p> <p>19 MR. HUTCHINSON: Can we go off</p> <p>20 the record a second?</p> <p>21 THE WITNESS: Yeah.</p> <p>22 VIDEOGRAPHER: The time is</p> <p>23 approximately 6:32 p.m. We're off the</p> <p>24 record.</p> <p>25 - - -</p>

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<p style="text-align: right;">454</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 (A discussion off the record</p> <p>3 occurred.)</p> <p>4 - - -</p> <p>5 VIDEOGRAPHER: The time is</p> <p>6 approximately 6:39 p.m. This begins</p> <p>7 tape seven. We are back on the</p> <p>8 record.</p> <p>9 - - -</p> <p>10 FURTHER EXAMINATION</p> <p>11 - - -</p> <p>12 BY MR. OLSON:</p> <p>13 Q. Okay, Mr. Pope, you just</p> <p>14 answered a series of questions asked by your</p> <p>15 counsel. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And before you were asked those</p> <p>18 questions, we took a break. Right?</p> <p>19 A. Yes.</p> <p>20 Q. And during that break, you met</p> <p>21 with your counsel. Right?</p> <p>22 A. Yes.</p> <p>23 Q. You had a conference with your</p> <p>24 counsel. Correct?</p> <p>25 A. Minimal, but yes.</p>	<p style="text-align: right;">456</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 of your testimony. Correct?</p> <p>3 MS. LEVINE: Objection.</p> <p>4 Instruct the witness not to answer.</p> <p>5 It's invading the attorney-client</p> <p>6 privilege.</p> <p>7 BY MR. OLSON:</p> <p>8 Q. You're not going to answer that</p> <p>9 question?</p> <p>10 A. No.</p> <p>11 Q. You discussed some of the</p> <p>12 documents that we looked at. Correct?</p> <p>13 A. No. I mean, I'm not answering</p> <p>14 it.</p> <p>15 Q. Well, I'm going to ask these</p> <p>16 questions and we'll let your counsel decide</p> <p>17 whether you're going to decline to answer</p> <p>18 them.</p> <p>19 You discussed the documents</p> <p>20 that you went over with your counsel. Correct?</p> <p>21 A. I didn't look at any documents --</p> <p>22 MS. LEVINE: Object.</p> <p>23 THE WITNESS: -- when I was with</p> <p>24 them.</p> <p>25 BY MR. OLSON:</p>
<p style="text-align: right;">455</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you discussed with your</p> <p>3 counsel the subjects that you testified</p> <p>4 about. Correct?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question. I object to</p> <p>7 questions asking for privileged</p> <p>8 information.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. And you answered some. Correct?</p> <p>11 A. Yes.</p> <p>12 Q. Which topics did you discuss?</p> <p>13 MS. LEVINE: Object. I'm</p> <p>14 objecting on the grounds of the</p> <p>15 attorney-client privilege, Mr. Pope,</p> <p>16 as we've been doing all day today and</p> <p>17 direct you not to answer questions</p> <p>18 when you confer with counsel. So the</p> <p>19 question he asked was about conferring</p> <p>20 with counsel, so I'm going to direct</p> <p>21 you not to answer.</p> <p>22 THE WITNESS: Okay.</p> <p>23 BY MR. OLSON:</p> <p>24 Q. So just yes or no. You</p> <p>25 discussed some matters related to the subject</p>	<p style="text-align: right;">457</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. But you discussed some of those</p> <p>3 documents?</p> <p>4 MS. LEVINE: Objection to</p> <p>5 invading the attorney-client</p> <p>6 privilege. Mr. Pope, this whole</p> <p>7 series of questions that asks you to</p> <p>8 divulge discussions with your counsel</p> <p>9 are off limits. All lawyers know</p> <p>10 that. So I'm directing you not to</p> <p>11 answer. Mr. Olson knows that,</p> <p>12 everyone in the room knows that. Okay?</p> <p>13 THE WITNESS: Okay.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. And you discussed the testimony</p> <p>16 you were going to give. Correct?</p> <p>17 MS. LEVINE: Objection. Once</p> <p>18 again, ask you to stop badgering the</p> <p>19 witness to attorneys --</p> <p>20 MR. OLSON: That's the last one</p> <p>21 I had. You can shortcut it and just</p> <p>22 say I'm instructing him not to answer</p> <p>23 if you like.</p> <p>24 MS. LEVINE: I don't tell you</p> <p>25 how to ask your questions, Mr. Olson.</p>

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<p style="text-align: right;">458</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 I would appreciate the same courtesy</p> <p>3 to me.</p> <p>4 MR. OLSON: You're welcome to</p> <p>5 give the speech. I was just trying to</p> <p>6 move things along. Do you want to do</p> <p>7 that?</p> <p>8 MS. LEVINE: No, you're not.</p> <p>9 You're trying to harass this witness</p> <p>10 and counsel, and I'm just telling you</p> <p>11 that this witness is not going to</p> <p>12 answer questions about privileged</p> <p>13 materials.</p> <p>14 BY MR. OLSON:</p> <p>15 Q. You're going to follow that</p> <p>16 instruction. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Now, in your testimony that you</p> <p>19 gave, you discussed the first guidelines that</p> <p>20 UEP put together back in the early '80s?</p> <p>21 A. Yes.</p> <p>22 Q. And you were talking about Mr.</p> <p>23 Armstrong looking at those, and you said</p> <p>24 something about those were not very</p> <p>25 impressive guidelines because they used</p>	<p style="text-align: right;">460</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 recommendations?</p> <p>3 A. We were just -- yes. At that</p> <p>4 time we were just suggesting these to our</p> <p>5 members.</p> <p>6 Q. And the distinction you're</p> <p>7 drawing is between suggestions that don't</p> <p>8 have teeth and hard and fast rules. Right?</p> <p>9 A. Yes.</p> <p>10 - - -</p> <p>11 (Exhibit Pope-49, United Egg</p> <p>12 Producers Animal Husbandry Guidelines</p> <p>13 For U.S. Egg Laying Flocks 2003</p> <p>14 Edition, Bates UE0809972 -UE0809984,</p> <p>15 was marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. OLSON:</p> <p>18 Q. Let me hand you what I'll mark</p> <p>19 Pope-49. This is -- I apologize to everyone</p> <p>20 else, I only made one copy. But this is</p> <p>21 the -- it's Bates stamped UE0809972 through</p> <p>22 809984. This is the United Egg Producers</p> <p>23 Animal Husbandry Guidelines --</p> <p>24 A. Yeah.</p> <p>25 Q. -- for the 2003 edition.</p>
<p style="text-align: right;">459</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 weasel words.</p> <p>3 A. Right.</p> <p>4 Q. Do you recall using the phrase</p> <p>5 "weasel words"?</p> <p>6 A. We did, yes. Uh-huh.</p> <p>7 Q. Who is "we"?</p> <p>8 A. Me.</p> <p>9 Q. You did. Yes, right. You gave</p> <p>10 examples of weasel words being should or may.</p> <p>11 Right?</p> <p>12 A. Right.</p> <p>13 Q. Are there any other examples of</p> <p>14 weasel words that come to mind?</p> <p>15 A. If I got the old guidelines, it</p> <p>16 would be real easy because there was a lot of</p> <p>17 them in there. Every time we went somewhere,</p> <p>18 we put in -- every guideline had some word to</p> <p>19 it that took all -- any, took any, took any,</p> <p>20 you know, anything meaningful to enforce it.</p> <p>21 There was nothing to enforce anything.</p> <p>22 Q. In other words, there weren't</p> <p>23 hard and fast rules --</p> <p>24 A. No.</p> <p>25 Q. -- there were just general</p>	<p style="text-align: right;">461</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. You recognize this document.</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. So this is the document that</p> <p>7 replaced that old set of guidelines which</p> <p>8 used the weasel words. Right?</p> <p>9 A. Right.</p> <p>10 Q. Let's look, for example, at the</p> <p>11 page on beak trimming which is page 6.</p> <p>12 A. Okay.</p> <p>13 Q. There's a discussion of beak</p> <p>14 trimming, first point made is that</p> <p>15 "Scientific evidence suggest that primary</p> <p>16 breeders of egg laying strains can select a</p> <p>17 more docile bird and minimize the need to</p> <p>18 beak trim, from a behavioral point of view."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. "Using genetic stocks that</p> <p>22 require little or no beak trimming is the</p> <p>23 most desirable approach."</p> <p>24 Do you see that?</p> <p>25 A. Right. Uh-huh.</p>

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<p style="text-align: right;">462</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. How is that enforced?</p> <p>3 MS. LEVINE: Object to the form</p> <p>4 of the question.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. Let me ask it this way: Was</p> <p>7 that a hard and fast rule or was that just a</p> <p>8 general recommendation?</p> <p>9 A. No. A lot of these were</p> <p>10 general recommendations. There was like --</p> <p>11 you know, like there's what we -- what you</p> <p>12 would call one or two killer guidelines that</p> <p>13 would -- you'd fail the whole thing. And I</p> <p>14 think you brought it up before.</p> <p>15 Q. Aside from those one or two</p> <p>16 killer guidelines, the rest of the UEP</p> <p>17 certified guidelines are just general</p> <p>18 recommendations. Correct?</p> <p>19 MS. LEVINE: Objection to form.</p> <p>20 THE WITNESS: It was an ongoing</p> <p>21 education program on how to best take</p> <p>22 care of the animals. So we</p> <p>23 included -- I mean, when you're</p> <p>24 dealing with animal welfare people,</p> <p>25 the only thing they're interested in</p>	<p style="text-align: right;">464</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 MS. LEVINE: Objection to the</p> <p>4 form of the question.</p> <p>5 BY MR. OLSON:</p> <p>6 Q. And beak trimming is one of</p> <p>7 those --</p> <p>8 A. Yes.</p> <p>9 Q. And beak trimming is one of</p> <p>10 those general recommendations. Right?</p> <p>11 A. Yes.</p> <p>12 Q. Here it says, "UEP recommends</p> <p>13 beak trimming only when necessary to prevent</p> <p>14 feather pecking and cannibalism..."</p> <p>15 A. Yes.</p> <p>16 Q. And it goes on. But UEP had no</p> <p>17 way of enforcing that beak trimming was used</p> <p>18 only when necessary, did it?</p> <p>19 A. Oh, sure. I mean, they kept</p> <p>20 records on all these things, whether this</p> <p>21 particular one did do beak trimming or he</p> <p>22 didn't, but...</p> <p>23 Q. But there was no requirement</p> <p>24 that a certified producer demonstrate that</p> <p>25 beak trimming was necessary, was there?</p>
<p style="text-align: right;">463</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 is the space. That's a big deal.</p> <p>3 They don't know much about beak</p> <p>4 trimming. They call it de-beaking.</p> <p>5 We've never de-beaked a bird. When</p> <p>6 you had a little -- if you have</p> <p>7 children, I don't know if you do, but</p> <p>8 if you have children, when they were</p> <p>9 small, you probably trimmed their</p> <p>10 nails so they wouldn't scratch their</p> <p>11 face. I happen to get a -- I happened</p> <p>12 to be circumcised, I didn't like that</p> <p>13 too well. It was very painful. So</p> <p>14 there's occasions when beak trimming,</p> <p>15 if they take too much off, you're</p> <p>16 doing 100,000 of them, so sometimes</p> <p>17 you take too much beak off and that</p> <p>18 hurts the bird, we're sorry for that.</p> <p>19 BY MR. OLSON:</p> <p>20 Q. Back to my question. Basically</p> <p>21 under the UEP certified program, there were</p> <p>22 two killer guidelines as you described them?</p> <p>23 A. Yes. Uh-huh.</p> <p>24 Q. And a lot of general</p> <p>25 recommendations?</p>	<p style="text-align: right;">465</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know. You'll have to</p> <p>3 ask the auditors.</p> <p>4 Q. If you turn to page 8, there's</p> <p>5 a molting discussion.</p> <p>6 A. Yeah.</p> <p>7 Q. That's another one where</p> <p>8 there's a general discussion, but no hard and</p> <p>9 fast rules, at least as of this time.</p> <p>10 Correct?</p> <p>11 A. Yeah, and I don't know how that</p> <p>12 changed. In later -- there was later issues</p> <p>13 of this, of course. And they spent a lot of</p> <p>14 time on molting and trying to develop</p> <p>15 non-feed withdraw molting programs.</p> <p>16 Q. But as of this time --</p> <p>17 A. At this time, they didn't.</p> <p>18 Q. -- no hard and fast rule, just</p> <p>19 a general?</p> <p>20 A. No.</p> <p>21 Q. Feeder space, were there any</p> <p>22 hard and fast rules about feeder space?</p> <p>23 A. No.</p> <p>24 Q. Were there any hard and fast</p> <p>25 rules about how euthanasia should occur?</p>

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<p style="text-align: right;">466</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. How what?</p> <p>3 Q. Euthanasia.</p> <p>4 A. I just can't recall what they</p> <p>5 were. We did have, but I can't recall.</p> <p>6 Q. If you can't recall, that's</p> <p>7 fine. We'll move on.</p> <p>8 You discussed in the exchange</p> <p>9 with your counsel an egg trading service that</p> <p>10 UEP operated?</p> <p>11 A. Yes.</p> <p>12 Q. When did that stop operating?</p> <p>13 MS. LEVINE: Objection to the</p> <p>14 form.</p> <p>15 THE WITNESS: They're still</p> <p>16 doing it today.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. They're still doing it today?</p> <p>19 A. Yeah.</p> <p>20 Q. They were doing it throughout</p> <p>21 the time you were president?</p> <p>22 A. Yes.</p> <p>23 Q. Are you familiar with how that</p> <p>24 trading service operated?</p> <p>25 A. Pretty familiar.</p>	<p style="text-align: right;">468</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you don't have firsthand</p> <p>3 experience with that. Correct?</p> <p>4 A. No. Uh-uh.</p> <p>5 Q. So what do you -- what were you</p> <p>6 basing that testimony on?</p> <p>7 A. Well, just, I think, comments</p> <p>8 from our members.</p> <p>9 Q. Do you recall what comments you</p> <p>10 were basing that testimony on?</p> <p>11 A. I don't remember who made them</p> <p>12 or anything. I just recall that it came as a</p> <p>13 big surprise to everybody, and they were</p> <p>14 actually having discussions on it because</p> <p>15 everybody was coming in with the same</p> <p>16 comment, I didn't realize this was going to</p> <p>17 happen. I didn't realize, so...</p> <p>18 Q. You're not suggesting that</p> <p>19 those comments were occurring before</p> <p>20 April 2003, are you, at the very earlier --</p> <p>21 MS. LEVINE: Objection to the</p> <p>22 form of the question.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. OLSON:</p> <p>25 Q. All right. Exhibit 32, please,</p>
<p style="text-align: right;">467</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. Who would be the person at UEP</p> <p>3 most familiar?</p> <p>4 A. It would be Gene and Phyllis</p> <p>5 Blizzard.</p> <p>6 Q. Do you know whether UEP had</p> <p>7 ever took title to any eggs?</p> <p>8 A. No.</p> <p>9 Q. They did not or you don't know?</p> <p>10 A. They did not take title.</p> <p>11 Q. Now, let's just look briefly at</p> <p>12 Exhibit 26 which your counsel asked you to</p> <p>13 look at.</p> <p>14 A. Okay.</p> <p>15 Q. And in the context of</p> <p>16 discussing the last sentence on page 1, you</p> <p>17 made a reference to birds given more room</p> <p>18 were more productive. Do you recall</p> <p>19 generally that testimony?</p> <p>20 A. This is on page 1? The last</p> <p>21 sentence. New construction.</p> <p>22 Q. Well, do you recall giving</p> <p>23 testimony about birds that have more room are</p> <p>24 more productive?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">469</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 and then I think we'll be done. This is the</p> <p>3 e-mail to Mr. Deffner, dated June 30, 2004.</p> <p>4 Your counsel asked you about this one as</p> <p>5 well.</p> <p>6 A. Sorry, I don't know what I did</p> <p>7 with it. My fault. What number?</p> <p>8 Q. 32?</p> <p>9 A. 32. Oh, you've got it. Okay.</p> <p>10 All right.</p> <p>11 Q. So your counsel asked you</p> <p>12 questions about this sentence that says,</p> <p>13 "Profitability is being jeopardized at a time</p> <p>14 when programs are in place to maintain</p> <p>15 profitable levels."</p> <p>16 Do you see that?</p> <p>17 A. This is -- which statement is</p> <p>18 it?</p> <p>19 Q. Under the first bullet, "Industry</p> <p>20 Economics."</p> <p>21 A. Okay. All right.</p> <p>22 Q. The one that says, "Profitability</p> <p>23 is being jeopardized at a time when programs</p> <p>24 are in place to maintain profitable levels."</p> <p>25 Do you see that?</p>

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<p style="text-align: right;">470</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. What programs were in placed to</p> <p>4 maintain profitable levels?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question.</p> <p>7 THE WITNESS: I don't know. I</p> <p>8 don't recall.</p> <p>9 BY MR. OLSON:</p> <p>10 Q. You don't recall what you meant</p> <p>11 by that?</p> <p>12 A. No.</p> <p>13 MR. OLSON: Okay. That's all I</p> <p>14 have.</p> <p>15 - - -</p> <p>16 FURTHER EXAMINATION</p> <p>17 - - -</p> <p>18 BY MS. LEVINE:</p> <p>19 Q. Mr. Pope, I just have one</p> <p>20 clarification. When you just answered Mr.</p> <p>21 Olson's question, I think you used the word</p> <p>22 "they" when he asked you about the cage space</p> <p>23 being important. When you said "they," who</p> <p>24 was the cage space important to?</p> <p>25 A. It was important to the</p>	<p style="text-align: right;">472</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 Q. You've been handed what's been</p> <p>4 marked as Exhibit 27.</p> <p>5 A. Yes.</p> <p>6 Q. Directing your attention down</p> <p>7 to the bottom of this exhibit, you write,</p> <p>8 "Sparboe's met separately with FMI &amp; NCCR</p> <p>9 officials..."</p> <p>10 A. Right.</p> <p>11 Q. Do you know who Sparboe met</p> <p>12 with?</p> <p>13 A. No.</p> <p>14 Q. How do you know that Sparboe</p> <p>15 met with officials from --</p> <p>16 A. I don't even know how I found</p> <p>17 out I knew. I don't know.</p> <p>18 Q. Do you know why Sparboe met</p> <p>19 with FMI and NCCR?</p> <p>20 A. No.</p> <p>21 Q. If you could turn your attention</p> <p>22 to Exhibit 40.</p> <p>23 A. Okay.</p> <p>24 Q. Exhibit 40 is an e-mail chain,</p> <p>25 the first e-mail is an e-mail from you to Tim</p>
<p style="text-align: right;">471</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Scientific Advisory Committee. They told us</p> <p>3 that's where they were -- the size they were</p> <p>4 supposed to use. It was important to some of</p> <p>5 the animal welfare groups. It was important</p> <p>6 to USDA. It was important that we live up to</p> <p>7 our commitment with FTC, you know. So it was</p> <p>8 important to a lot of people.</p> <p>9 MS. LEVINE: No further</p> <p>10 questions. Thank you, Mr. Pope.</p> <p>11 VIDEOGRAPHER: The time is</p> <p>12 approximately 6:53 p.m. We're off the</p> <p>13 record.</p> <p>14 - - -</p> <p>15 (A recess was taken.)</p> <p>16 - - -</p> <p>17 VIDEOGRAPHER: The time is</p> <p>18 approximately 6:59 p.m. We are back</p> <p>19 on the record.</p> <p>20 - - -</p> <p>21 EXAMINATION</p> <p>22 - - -</p> <p>23 BY MR. HUTCHINSON:</p> <p>24 Q. Mr. Pope, I'm Troy Hutchinson.</p> <p>25 I represent Sparboe Farms.</p>	<p style="text-align: right;">473</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Hammonds. Is that right?</p> <p>3 A. Yes. Uh-huh.</p> <p>4 Q. And Tim Hammonds is who?</p> <p>5 A. He heads up FMI. He's the</p> <p>6 president of FMI, or was. I think he's</p> <p>7 retired now.</p> <p>8 Q. In your e-mail to Tim at the</p> <p>9 bottom, where you write, "Sparboe...has tried</p> <p>10 to destroy the industry developed program for</p> <p>11 the Animal Care Guidelines."</p> <p>12 A. Yes.</p> <p>13 Q. What did you mean by that?</p> <p>14 A. Well, you know, I have nothing</p> <p>15 but accolades for Sparboe Company and Bob</p> <p>16 Sparboe and Beth, but I think that they took</p> <p>17 unreasonable steps and did everything in</p> <p>18 their power to destroy the Animal Care</p> <p>19 Certified Program. They called meetings with</p> <p>20 members to put together a block of producers</p> <p>21 which is perfectly legal. But, golly, I</p> <p>22 mean, I just have to tell you, I always felt</p> <p>23 that Bob always had a good operation, I never</p> <p>24 could figure out why -- I don't know why he</p> <p>25 hid it, I mean why he was so opposed to it.</p>

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<p style="text-align: right;">474</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 But it didn't -- I mean, it didn't jeopardize</p> <p>3 my relationship with him. I mean, it was</p> <p>4 just it was a sad thing, I mean, because I go</p> <p>5 up there and, you know -- and I couldn't</p> <p>6 solve a problem for him. I wanted to, but I</p> <p>7 just couldn't. There was no way I could. I</p> <p>8 mean, all this was decided by the board and</p> <p>9 the Animal Welfare Committee and I got my</p> <p>10 marching orders.</p> <p>11 Q. So by destroy, you mean that</p> <p>12 Sparboe disagreed with UEP --</p> <p>13 A. Yes. Uh-huh.</p> <p>14 Q. Again, I know it's getting</p> <p>15 late, but let me finish my question.</p> <p>16 A. Okay. Yeah. Okay.</p> <p>17 Q. Let me finish talking and then</p> <p>18 you talk so we get a clean record.</p> <p>19 A. Okay.</p> <p>20 Q. You just did it again, Mr.</p> <p>21 Pope.</p> <p>22 A. Okay.</p> <p>23 Q. So by destroy, you meant</p> <p>24 Sparboe disagreed with the UEP Animal Care</p> <p>25 Guidelines. Correct?</p>	<p style="text-align: right;">476</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Bates UE0879102 &amp; UE0879104, was</p> <p>3 marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. HUTCHINSON:</p> <p>6 Q. Mr. Pope, I've just handed you</p> <p>7 what's been marked as Exhibit 50. Do you</p> <p>8 want to take a chance to review this?</p> <p>9 A. Yeah.</p> <p>10 MS. CAIN-MANNIX: What's the</p> <p>11 Bates label, please?</p> <p>12 MR. HUTCHINSON: It starts at</p> <p>13 UE0879102. And Exhibit 50 is a</p> <p>14 three-page e-mail chain that goes to</p> <p>15 UE0879104. Just let me know when</p> <p>16 you're done reviewing it.</p> <p>17 THE WITNESS: (Reviewing</p> <p>18 document.)</p> <p>19 Okay.</p> <p>20 MR. OLSON: Does the original</p> <p>21 have page 2?</p> <p>22 THE WITNESS: Did the original</p> <p>23 what?</p> <p>24 MR. OLSON: Have the second page</p> <p>25 of the chain?</p>
<p style="text-align: right;">475</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 MS. CAIN-MANNIX: Objection to</p> <p>4 the form.</p> <p>5 MR. HUTCHINSON: What's the</p> <p>6 objection?</p> <p>7 MS. CAIN-MANNIX: To the form of</p> <p>8 the question.</p> <p>9 MR. HUTCHINSON: What's the</p> <p>10 objection, though? What form</p> <p>11 objection?</p> <p>12 MS. CAIN-MANNIX: I think you're</p> <p>13 trying to mischaracterize what was</p> <p>14 said in the letter, what his testimony</p> <p>15 is.</p> <p>16 MR. HUTCHINSON: What exhibit</p> <p>17 did we leave off on?</p> <p>18 THE WITNESS: This one here,</p> <p>19 number 40?</p> <p>20 MR. HUTCHINSON: 49.</p> <p>21 THE WITNESS: 49, okay.</p> <p>22 MR. HUTCHINSON: Could you,</p> <p>23 please, mark this as Exhibit 50.</p> <p>24 - - -</p> <p>25 (Exhibit Pope-50, E-mail string,</p>	<p style="text-align: right;">477</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MR. HUTCHINSON: Yes, it did.</p> <p>3 Actually the copy -- I'm going to have</p> <p>4 to switch this document. This is --</p> <p>5 can we remark this as Exhibit 50.</p> <p>6 Let's change this.</p> <p>7 MS. CAIN-MANNIX: Troy, you're</p> <p>8 kind of trailing out, so if you could</p> <p>9 speak up, it would be appreciated.</p> <p>10 MR. OLSON: We're just remarking</p> <p>11 the exhibit right now.</p> <p>12 BY MR. HUTCHINSON:</p> <p>13 Q. Mr. Pope, the exhibit has been</p> <p>14 remarked. If you want to let me know when</p> <p>15 you're done reviewing the full document, let</p> <p>16 me know.</p> <p>17 A. (Reviewing document.)</p> <p>18 Okay.</p> <p>19 Q. On page 2, down at the bottom,</p> <p>20 the e-mail from Brian Joyer of Sparboe to Tim</p> <p>21 Hammonds of FMI, do you see the second bullet</p> <p>22 point there?</p> <p>23 A. Here you mean, does require a</p> <p>24 seal, does FMI?</p> <p>25 Q. No, the bullet above that, the</p>

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<p style="text-align: right;">478</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 second one down.</p> <p>3 A. Oh. Okay.</p> <p>4 Q. And do you see there that Mr.</p> <p>5 Joyer is asking for FMI's position and NCCR's</p> <p>6 position on the implementation of animal</p> <p>7 welfare guidelines, and specifically what the</p> <p>8 FMI and NCCR position is with respect to the</p> <p>9 100 percent rule?</p> <p>10 A. Yes.</p> <p>11 Q. And flipping back to page 1, do</p> <p>12 you see in Karen Brown's e-mail responding to</p> <p>13 Mr. Joyer, do you see her second bullet point</p> <p>14 starting with "Our goal..."?</p> <p>15 A. Yes.</p> <p>16 Q. And her -- is this consistent</p> <p>17 with your understanding of FMI's position on</p> <p>18 the 100 percent rule?</p> <p>19 A. You know, in all honesty, I</p> <p>20 guess I'd have to get down a piece of paper</p> <p>21 and see what the timeline is because to me</p> <p>22 it's a little confusing, so I can't be</p> <p>23 expected to, you know, to guess what she's</p> <p>24 done here. But what she's saying as I would</p> <p>25 interpret it, okay, and you might interpret</p>	<p style="text-align: right;">480</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 from NCCR?</p> <p>3 A. Yes.</p> <p>4 Q. And what was the reason you</p> <p>5 were meeting with them?</p> <p>6 A. What was the reason we were</p> <p>7 meeting with them was following up on our</p> <p>8 original calls at FMI, we actually went over</p> <p>9 there on something other than animal welfare.</p> <p>10 I don't remember what the issue was. But I</p> <p>11 was meeting with FMI and we were talking and</p> <p>12 then one of us, Gene or somebody, we</p> <p>13 mentioned that we were in the process of</p> <p>14 working on animal welfare. She said, oh, my</p> <p>15 God, we are too. And she says, how far along</p> <p>16 are you. So we said here's where we're at</p> <p>17 now. So I think trying to interpret what</p> <p>18 they got full input on, whatever we ended up</p> <p>19 with because we took their recommendations</p> <p>20 back to both the UEP committee and the</p> <p>21 Scientific Advisory Committee and, in fact,</p> <p>22 they pulled some of our people off on our</p> <p>23 Scientific Advisory Committee to be their</p> <p>24 Advisory Committee as did McDonald's.</p> <p>25 Q. So FMI and NCCR were completely</p>
<p style="text-align: right;">479</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 it differently, she's saying that the</p> <p>3 enhanced animal welfare is for all animals in</p> <p>4 food production, not animal used only for</p> <p>5 certain products or product categories. So</p> <p>6 she's saying 100 percent. That's how I</p> <p>7 would -- that's how I would interpret that</p> <p>8 she answered your question. But I've never</p> <p>9 seen this. This is the first time I've seen</p> <p>10 this. Okay.</p> <p>11 Q. And you testified earlier today</p> <p>12 that you met fairly regularly with people</p> <p>13 from FMI?</p> <p>14 A. Yes.</p> <p>15 Q. And who from FMI did you meet</p> <p>16 with?</p> <p>17 A. Tim, Brown and Hollingsworth.</p> <p>18 Q. And did you also meet with</p> <p>19 Karen Brown?</p> <p>20 A. That's what I said. Karen</p> <p>21 Brown, Tim and Hollingsworth, Jill</p> <p>22 Hollingsworth.</p> <p>23 Q. You mean Tim Hammonds?</p> <p>24 A. Tim Hammonds, I'm sorry.</p> <p>25 Q. Did you also meet with people</p>	<p style="text-align: right;">481</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 independently of UEP creating their own</p> <p>3 Animal Welfare Program?</p> <p>4 A. I didn't just say that, did I?</p> <p>5 I said that they helped us develop ours, is</p> <p>6 what I said.</p> <p>7 Q. Do you know what was the FMI</p> <p>8 position on the 100 percent rule, were they</p> <p>9 in favor of it?</p> <p>10 A. She says yes.</p> <p>11 Q. Is that consistent with your</p> <p>12 meetings with them?</p> <p>13 A. Yes.</p> <p>14 Q. And NCCR, they were also in</p> <p>15 favor of the 100 percent rule?</p> <p>16 A. Yes. I have to say that</p> <p>17 they -- generally NCCR went along with</p> <p>18 whatever FMI did.</p> <p>19 Q. And are you aware of Sparboe</p> <p>20 meeting with FMI and NCCR to try to lobby</p> <p>21 them to take certain positions on animal</p> <p>22 welfare guidelines?</p> <p>23 A. I would have to say that the</p> <p>24 answer is yes, but I don't remember where I</p> <p>25 heard it.</p>

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<p style="text-align: right;">482</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And do you know what Sparboe's</p> <p>3 agenda was when it was --</p> <p>4 A. No.</p> <p>5 MS. CAIN-MANNIX: Objection.</p> <p>6 How would he know what Sparboe's</p> <p>7 agenda was?</p> <p>8 BY MR. HUTCHINSON:</p> <p>9 Q. Do you -- was -- do you know</p> <p>10 if, from your meetings with FMI and NCCR</p> <p>11 whether Sparboe was trying to get FMI and</p> <p>12 NCCR --</p> <p>13 A. I can't answer that. I don't</p> <p>14 know.</p> <p>15 Q. But you know that Sparboe was</p> <p>16 trying to get FMI not to adopt an Animal</p> <p>17 Welfare Program that incorporated the</p> <p>18 100 percent rule. Right?</p> <p>19 A. I don't know that.</p> <p>20 MS. CAIN-MANNIX: Objection.</p> <p>21 Same objection.</p> <p>22 BY MR. HUTCHINSON:</p> <p>23 Q. If you could refer back to</p> <p>24 Exhibit 27. Down at the bottom again. You</p> <p>25 write in this memo that "Sparboe's met</p>	<p style="text-align: right;">484</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 MS. CAIN-MANNIX: I have no</p> <p>3 questions.</p> <p>4 MS. LEVINE: Thank you very</p> <p>5 much.</p> <p>6 THE WITNESS: Go ahead.</p> <p>7 MS. LEVINE: She has -- no, she</p> <p>8 says she has none.</p> <p>9 THE WITNESS: Oh, she has none.</p> <p>10 MS. LEVINE: So you are</p> <p>11 finished. Thank you very much, Mr.</p> <p>12 Pope.</p> <p>13 VIDEOGRAPHER: The time is</p> <p>14 approximately 7:15 p.m. The end of</p> <p>15 disc seven. We're now off the record.</p> <p>16 - - -</p> <p>17 (Witness excused.)</p> <p>18 - - -</p> <p>19 (Deposition concluded at 7:15</p> <p>20 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">483</p> <p>1 AL POPE - HIGHLY CONFIDENTIAL</p> <p>2 separately with FMI &amp; NCCR officials when UEP</p> <p>3 did not support their company position on the</p> <p>4 100% Rule."</p> <p>5 A. Yeah.</p> <p>6 Q. What was the company position,</p> <p>7 Sparboe's company position on the 100 percent</p> <p>8 rule?</p> <p>9 A. That they don't have 100</p> <p>10 percent.</p> <p>11 MS. CAIN-MANNIX: Objection.</p> <p>12 He's an UEP official, not a Sparboe.</p> <p>13 BY MR. HUTCHINSON:</p> <p>14 Q. So your understanding is that</p> <p>15 Sparboe disagreed with the 100 percent rule?</p> <p>16 A. Yes.</p> <p>17 Q. And that's why Sparboe was</p> <p>18 meeting with FMI and NCCR. Correct?</p> <p>19 A. Ask Sparboe. I don't know. I</p> <p>20 assume, but I don't know.</p> <p>21 MR. HUTCHINSON: I have no</p> <p>22 further questions.</p> <p>23 MS. LEVINE: Are we finished for</p> <p>24 today, everybody?</p> <p>25 Thank you, Mr. Pope.</p>	<p style="text-align: right;">485</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4</p> <p>5 I do hereby certify that I am a Notary</p> <p>6 Public in good standing, that the aforesaid</p> <p>7 testimony was taken before me, pursuant to</p> <p>8 notice, at the time and place indicated; that</p> <p>9 said deponent was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth; that the testimony of said</p> <p>12 deponent was correctly recorded in machine</p> <p>13 shorthand by me and thereafter transcribed</p> <p>14 under my supervision with computer-aided</p> <p>15 transcription; that the deposition is a true</p> <p>16 and correct record of the testimony given by</p> <p>17 the witness; and that I am neither of counsel</p> <p>18 nor kin to any party in said action, nor</p> <p>19 interested in the outcome thereof.</p> <p>20</p> <p>21 WITNESS my hand and official seal this</p> <p>22 24th day of May, 2013.</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">_____ Notary Public</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<div style="text-align: right; font-weight: bold;">486</div> <p>1</p> <p>2                    INSTRUCTIONS TO WITNESS</p> <p>3</p> <p>4                    Please read your deposition over</p> <p>5                    carefully and make any necessary corrections.</p> <p>6                    You should state the reason in the</p> <p>7                    appropriate space on the errata sheet for any</p> <p>8                    corrections that are made.</p> <p>9                    After doing so, please sign the errata</p> <p>10                  sheet and date it.</p> <p>11                  You are signing same subject to the</p> <p>12                  changes you have noted on the errata sheet,</p> <p>13                  which will be attached to your deposition.</p> <p>14                  It is imperative that you return the</p> <p>15                  original errata sheet to the deposing</p> <p>16                  attorney within thirty (30) days of receipt</p> <p>17                  of the deposition transcript by you. If you</p> <p>18                  fail to do so, the deposition transcript may</p> <p>19                  be deemed to be accurate and may be used in</p> <p>20                  court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<div style="text-align: right; font-weight: bold;">488</div> <p>1                    ERRATA SHEET</p> <p>2                    IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION</p> <p>3                    DATE: MAY 21, 2013</p> <p>4                    PAGE    LINE                    CORRECTION AND REASON</p> <p>5                    _____</p> <p>6                    _____</p> <p>7                    _____</p> <p>8                    _____</p> <p>9                    _____</p> <p>10                  _____</p> <p>11                  _____</p> <p>12                  _____</p> <p>13                  _____</p> <p>14                  _____</p> <p>15                  _____</p> <p>16                  _____</p> <p>17                  _____</p> <p>18                  _____</p> <p>19                  _____</p> <p>20                  _____</p> <p>21                  _____</p> <p>22                  _____</p> <p>23                  _____</p> <p>24                  _____</p> <p>25                  (DATE)                    AL POPE</p>
<div style="text-align: right; font-weight: bold;">487</div> <p>1                    ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3                    I have read the foregoing transcript of</p> <p>4                    my deposition and except for any corrections or</p> <p>5                    changes noted on the errata sheet, I hereby</p> <p>6                    subscribe to the transcript as an accurate record</p> <p>7                    of the statements made by me.</p> <p>8</p> <p>9                    _____</p> <p>10                  AL POPE</p> <p>11</p> <p>12                  SUBSCRIBED AND SWORN before and to me</p> <p>13                  this ____ day of _____, 20____.</p> <p>14</p> <p>15</p> <p>16                  _____</p> <p>17                  NOTARY PUBLIC</p> <p>18</p> <p>19</p> <p>20                  My Commission expires:</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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<b>A</b>	<b>actions</b> 1:5	224:12 412:10	<b>age</b> 225:24 336:24
<b>aaragona</b> 3:9	<b>active</b> 141:21	<b>advertiser</b> 327:21	337:2 342:2
<b>ability</b> 44:16 98:20	228:24	<b>advertising</b> 178:24	<b>agencies</b> 311:24
141:16 173:25	<b>activist</b> 152:13	310:13,19 312:9	<b>agency</b> 311:15,18
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